TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 224.

BRIDGE, BEACH & COMPANY, APPELLANTS,

vs.

THE EXCELSIOR MANUFACTURING COMPANY, G. F. FILLEY, PRESIDENT, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED AUGUST 9, 1879.

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1 In the circuit court of the United States for the eastern district of Missouri.

BRIDGE, BEACH AND COMPANY, COMPLAINANTS,
vs.
EXCELSIOR MANUFACTURING CO. ET AL., DEFENDANTS.

Be it remembered that on the 25th day of April, 1878, the following proceedings were had in said case, to wit:

BRIDGE, BEACH & CO., COMPLAINANTS,
vs.
EXCELSIOR MANUFACTURING CO. ET AL., DEFENDANTS.

This day come the complainants, by their solicitors, Messrs. Hatch & Parkinson, and file their bill of complaint, and, on motion of said solicitors, it is ordered that subpœnas in chancery issue against said defendants, returnable to rules the first Monday, the 3rd day, of June next.

The said bill of complaint is in the words and figures following, to wit:

2, 3 *Bill in equity.*

Circuit court of the United States in and for the eastern district of Missouri.

BRIDGE, BEACH & CO.
vs.
EXCELSIOR MANUFACTURING CO., GILES F. FILLEY, pres't, CHAS. H. FILLEY, vice-pres't, and JAMES W. BELL, sec'y. } In equity. No. 1244.

To the honorable the judges of the circuit court of the United States in and for the eastern district of Missouri:

4 Bridge, Beach & Co., a corporation organized under the laws of the State of Missouri, and having its principal office in the city of St. Louis, in said State, brings this bill against the Excelsior Manufacturing Co., a corporation existing under and by virtue of the laws of the State of Missouri, and doing business and having its principal office in the city of St. Louis, State of Missouri, Giles F. Filley, pres't, Chas. H. Filley, vice-pres't, and James W. Bell, secretary, citizens of said State and of the United States, and residing in said city and State aforesaid.

And thereupon your orator complains and says that heretofore, and before the eighteenth day of July, 1876, Esek Bussey was the true, original, and first inventor of a certain new and useful improvement in cooking-stoves, not known or used before said invention, and not at the time of his application for a patent in public use or on sale with his consent or allowance.

And your orator further shows unto your honors that the said Esek Bussey having assigned an undivided half interest in said invention to Chas. A. McLeod, being, as aforesaid, the inventor of said improve-

ment, and being a citizen of the United States, made application to the Commissioner of Patents for letters patent in accordance with the then existing acts of Congress, and having duly complied in all respects with the conditions and requisitions of said acts, on the eighteenth day of July, 1876, letters patent of the United States, signed, sealed, and executed in due form of law, for the said invention or discovery, were issued to said Esek Bussey and Chas. A. McLeod, whereby there was secured to them, and their heirs, executors, administrators, or assigns, for the term of seventeen years from the eighteenth day of July, 1876, the full and exclusive right of making, using, and vending to others to be used the said improvement, which said letters patent are now of record in the Patent Office of the United States, and which, or a duly certified copy thereof, are here ready in court to be produced.

And your orator further shows unto your honors that on or about the second day of October, 1876, the said Bussey and McLeod, by an
5 assignment in writing of that date, sold, assigned, and transferred unto your orator all their right, title, and interest in and to said letters patent and invention for the city and county of St. Louis, Missouri, and all other territory lying between the Mississippi River and the Rocky Mountains, including the exclusive right to manufacture in all of said territory, which said assignment was duly recorded in the Patent Office of the United States, which, or a duly certified copy thereof, is here in court ready to be produced.

And your orator further shows unto your honors that by virtue of the premises, it became and now is, the sole and exclusive owner of said interest in said letters patent, and the inventions and improvements described therein, and of all the rights and privileges granted and secured, or intended to be granted and secured, thereby. And that since it became the owner thereof as aforesaid it has invested and expended large sums of money and has been to great trouble in and about said invention, and for the purpose of carrying on the business of manufacturing cooking-stoves, and making the same profitable to itself and useful to the public; and that said invention has been and is of great benefit and advantage; and that cooking-stoves were made according to said invention and sold by your orator to great advantage to the public; and that the public have generally acknowledged and acquiesced in the aforesaid rights of your orator; and your orator believes that it will realize and receive large gains and profits therefrom if infring'ments by said defendants and their confederates shall be prevented.

Yet the said defendants, well knowing the premises and the rights secured to your orator as aforesaid, but contriving to injure your orator and deprive it of the benefits and advantages which might, and otherwise would, accrue unto it from said invention, after the issuing of the letters patent as aforesaid, and before the commencement of this suit, did, as your orator is informed and believes, without the license or allowance and against the will of your orator, and in violation of its rights, and in infringement of the aforesaid letters patent No. 180001,
6 unlawfully and wrongfully, and in defiance of the rights of your orator, make, construct, use, and vend to others to be used the said invention, and did make, construct, use, and vend to others to be used cooking-stoves made according to and employing and containing said invention, and that they still continue so to do; and that they are threatening to make the aforesaid stoves in large quantities, and to supply the market therewith and to sell the same.

All in defiance of the rights acquired by and secured to your orator, as aforesaid, and to its great and irreparable loss and injury, and by

which it has been and still is being deprived of great gains and profits which it might and otherwise would have obtained, but which have been received and enjoyed, and are being received and enjoyed, by the said defendants by and through their aforesaid unlawful acts and doings.

And your orator further shows unto your honors, on information and belief, that said defendants have sold large quantities of said cooking-stoves, and have a large quantity on hand which they are offering for sale, and have made and realized large profits and advantages therefrom, but to what extent and how much exactly your orator does not know, and prays a discovrey thereof. And your orator says that the use of the said invention by said defendants, and their preparation for and avowed determination to continue the same, and their other aforesaid unlawful acts in disregard and defiance of the rights of your orator, have the effect to and do encourage and induce others to venture to infringe said patent, in disregard of your orator's rights

And your orator further shows unto your honors that it has caused notice to be given to said defendants of said infringements, and of the rights of your orator in the premises, and requested them to desist and refrain therefrom, but they have disregarded said notice, and refused to desist from said infringements, and still continue to make and sell said cooking-stoves.

7 And forasmuch as your orator can have no adequate relief except in this court, to the end that the defendants may be compelled to account for and pay over the income thus unlawfully derived from the violation of the rights of your orator as above, and be restrained from any further violation of said rights, your orator prays that your honors may grant a writ of injunction restraining the defendants from any further construction or sale, or use in any manner, of said patented cooking-stoves, or any part thereof, in violation of the rights of your orator as aforesaid, and that the cooking-stoves now in possession or use of the said defendants may be destroyed, or delivered up to your orator for that purpose. And, also, that your honors, upon the entering of a decree for infringement as above prayed for, may proceed to assess, or cause to be assessed under your direction, in addition to the profits to be accounted for by the defendants as aforesaid, the damages your orator has sustained by reason of such infringement, and that your honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment, under the circumstances of the willful and unjust infringement by said defendants, as herein set forth. And your orator prays also for a provisional or preliminary injunction, and for such other relief as the equity of the case may require and as to your honors may seem meet.

May it please your honors to grant unto your orator a writ of injunction conformable to the prayer of this bill, and also a writ of subpœna of the United States of America, directed to the said Excelsior Manufacturing Co., Giles F. Filley, president, Chas. H. Filley, vice-president, and James W. Bell, secretary, and commanding them to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the court shall seem meet and be required by the principles of equity and good conscience.

HATCH & PARKINSON,
Solicitors for Complainant.

HATCH & PARKINSON,
Counsel.

8 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

On this 22d day of April, 1878, before me personally appeared J. H. Beach, president of Bridge, Beach & Co., the above-named complainant, who, being by me first duly sworn, deposes and says that he has read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

J. H. BEACH.

Subscribed and sworn to before me this 22d day of April, A. D. 1878.
I certify that my term of office expires on the 3rd day of May, A. D. 1881.

[SEAL.] W. B. HOMER,
Notary Public, St. Louis, Mo.

9 And the said subpœna in chancery is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri, sct:

In the circuit of the United States in and for said district.

The President of the United States to Excelsior Manufacturing Co., Giles F. Filley, president, Chas. H. Filley, vice-president, and James W. Bell, secretary, greeting:

You are hereby commanded to be and appear at rules to be held at the office of the clerk of the circuit court of the United States in and for the eastern district of Missouri, on the first Monday of June next, at the city of St. Louis, then and there to answer the bill of complaint of Bridge, Beach & Co., a corporation, a citizen of the State of Missouri, filed against you on the 25th day of April, 1878. Hereof fail not.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 2d day of May, 1878. Is-
10 sued at office, in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] M. M. PRICE, *Clerk*,
By A. P. SELBY, *Deputy.*

MEM.—The defendants to enter their appearance to this suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso.

M. M. PRICE, *Clerk*,
By A. P. SELBY, *Deputy.*

Marshal's return.

UNITED STATES OF AMERICA,
Eastern District of Missouri, sct:

I have executed this writ by delivering a copy thereof, together with the petition thereto attached, to the within-named Giles F. Filley, president, and by delivering copies of this writ to the within-named Chas. H. Filley, vice-president, and James W. Bell, secretary, respectively, of the within-named Excelsior Manufacturing Co., on the 4th day of

May, 1878, at St. Louis, in said district, and further by deliv-
11 ering a copy of this writ to the within-named Excelsior Manufacturing Co. (by delivering said copy to Giles F. Filley, its president) on the fourth day of May, 1878.

H. W. LEFFINGWELL,
United States Marshal, Eastern District of Missouri,
By JAMES B. PADDLEFORD, *Deputy.*

And afterwards, on the 25th day of June, 1878, the defendants filed their answer to the bill of complaint, which is as follows, to wit:

12, 13 *Answer.*

Circuit court of the United States within and for the eastern district of Missouri, in the eighth circuit.

BRIDGE, BEACH & CO., COMPLAINANTS,
vs.
EXCELSIOR MANUFACTURING COMPANY, GILES F. Filley, president, Chas. H. Filley, vice-pres't, and James W. Bell, secretary, defendants. } In equity. No. 1244.

To the honorable the judges of the circuit court of the United States in and for the eastern district of Missouri:

The joint and several answer of the Excelsior Manufacturing Company, Giles F. Filley, president, Charles H. Filley, vice-president, and James W. Bell, secretary, defendants, to the bill of complaint of Bridge, Beach and Company, complainant:

These defendants, now and at all times saving and reserving to themselves, and each of them, all benefit and advantage of exception which can or may be had or taken to many errors, uncertainties, or imperfections in the said complainants' bill of complaint contained, and for answer thereunto, or u*nder* so much and such part thereof as these defendants are advised is or are material or necessary for them or either of them to make answer unto, these defendants, jointly and severally answering, say that they admit on information and belief that the letters patent as in said bill alleged were granted in the manner and at the time as in said bill alleged, but these defendants say they have no information
or belief as to whether the assignment as in said bill alleged was
14 granted as stated, and therefore they deny the same, and leave the complainant to make such proof thereof as it may be advised.

Further answering, these defendants deny any knowledge, information, or belief as to whether said complainant has made or sold a large number or any number of stoves containing said invention, or whether it has made great or any gains and profit from any such manufacture and sale, and consequently these defendants deny the truth of each and every allegation in relation thereto contained in said bill.

Further answering, these defendants deny that they or either of them have or has made, constructed, used, or vended to others to be used any stove or stoves embodying in their construction the improvement described and claimed in said letters patent in said bill alleged, or that they or either of them have or has in any wise infringed upon any exclusive rights which said complainant can or may have under and by virtue of said

letters patent as in said bill alleged; and these defendants also deny that they or either of them have at any time or in any manner threatened to infringe upon said letters patent, or that they or either of them intend to so infringe, or that they or either of them have on hand or in stock any stove or stoves embodying or containing said pretended improvement as set forth in said letters patent. And for a further answer and complete defence to the cause of action set forth in said bill, these defendants deny that the said Esek Bussey was the original and first inventor of the pretended improvements claimed in said letters patent in said bill alleged, but aver that long anterior to the alleged invention thereof by the said Esek Bussey the same were well known to and practically and publicly used by Daniel E. Paris, at Troy, in the State of New York, which fact will be shown by the testimony of the said Paris, who is a resident of said Troy; also that the said pretended improvements were so known to and practically and publicly used by one P. N. Burke, at No. 820 Water street, in the city of New York, which fact they expect to show by the testimony of said Burke, whose place of business is at No. 208 Water street, in the city of New York, and by B. T. Holbrook, now a resident of the city of Saint Louis, and at present in the employ of these defendants.

15 Further answering, these defendants say that long anterior to the date of the pretended invention of said Bussey, the pretended improvements described and claimed in said letters patent were fully shown and described in certain letters patent of the United States as follows, to wit:

Letters patent for "Weather strip," granted H. W. Carew, Sept. 7, 1869, No. 94472.

Letters patent for "Cook-stove," granted D. E. Paris, April 11, 1871, No. 113556.

Letters patent for "Stove-covers, &c.," granted J. V. Vrooman, September 26th, 1871, No. 119434.

Letters patent for "Carriage-step," granted J. Pendergast, March 19th, 1872, No. 124,697.

Letters patent for "Carriage-step," granted E. Wells, April 2nd, 1872, No. 125235.

Letters patent for "Carriage-step," granted H. T. Betts, June 4th, 1861, No. 32460.

Also in certain English letters patent as follows, to wit:

Letters patent for "Carriage-step," granted Edward Thomasson on the 31st day of October, A. D. 1796, and numbered 2142, and on the 22nd day of December, A. D. 1798, and numbered 2,282.

Further answering, these defendants say that the alleged invention as set forth in said letters patent of said Bussey is void of utility, for the reason that the manner of practicing the same as set forth and shown in said letters patent is not such as will enable any one to make use thereof in the manner and with the results claimed, and for the reason that the the invention as described and shown is utterly and entirely impracticable, and cannot be and never was put to any practical use by the complainant or its assignors, or any one else.

Wherefore these defendants humbly submit and insist that under the fact and circumstances as above alleged the said complainant has no right to any further or other answer to said bill, or any part thereof, than as above given, and no right of injunction, account, or other

16 relief prayed for in said bill, and they therefore ask to be hence

dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

EXCELSIOR MANUFACTURING COMPANY,
By G. F. FILLEY, *President.*
GILES F. FILLEY, *President.*
CHAS. H. FILLEY, *Vice-President.*
JAMES W. BELL, *Secretary.*

SAM'L S. BOYD,
Defendants' Solicitor.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Giles F. Filley, of lawful age, being duly sworn, deposes and says that he has read the above and foregoing answer by him subscribed; that the same is true so far as the matter and things therein contained are within his own knowledge, and so far as the statements therein contained are made upon information and belief he verily believes the same to be true.

GILES F. FILLEY.

Subscribed and sworn to before me this 25th day of June, 1878.
M. M. PRICE, *Clerk,*
By T. L. CRAWFORD, *D. C.*

And afterwards the complainants, on the 5th day of August, 1878, filed their replication; which is in words and figures following, to wit:

17 *Replication.*

Circuit court of the United States for the eastern district of Missouri.

BRIDGE, BEACH & CO.
vs.
EXCELSIOR MANUFACTURING CO. ET AL. } In equity. No. 1244.

The replication of the above-named complainant to the answer of the above-named defendants.

This repliant, saving and reserving to itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of said answer, for replication thereunto says that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

HATCH & PARKINSON,
Solicitors for Complainant.

18, 19 And afterwards, at the March term, 1879, of said court, and on the 29th day of March, the following proceedings were had in said case, to wit:

Decree.

BRIDGE, BEACH AND COMPANY, COMPLAINANTS,
vs.
EXCELSIOR MANUFACTURING CO. ET AL., DEFENDANTS.

This cause coming on to be heard upon the pleadings and proofs, and the arguments of counsel, and being considered by the court, the court finds that the defendants have not infringed upon the rights of the complainants under their letters patent in the bill of complaint set forth.

It is now ordered, adjudged, and decreed that the bill of complaint herein be, and the same is hereby, dismissed, that the complainants pay the costs herein to be taxed, and that a fee bill or execution issue therefor.

And afterwards, at said March term, 1879, of said cause, the
20 following further proceedings were had in said case, to wit:

BRIDGE, BEACH & CO. COMPLAINANTS,
vs.
EXCELSIOR MANUFACTURING CO. ET AL., DEFENDANTS.

This day come Parkinson & Parkinson and enter their appearance as solicitors for complainants in the place of Hatch & Parkinson; and thereupon the complainants pray an appeal from the decree herein to the Supreme Court of the United States; which appeal is allowed upon the complainants giving an appeal bond in the sum of five hundred dollars, to be approved by one of the judges of this court.

And afterwards, at said March term, 1879, of said court, and on the 14th day of June, the following further proceedings were had in said case, to wit:

BRIDGE, BEACH & CO., COMPLAINANTS,
vs.
EXCELSIOR MANUFACTURING CO. ET AL., DEFENDANTS.

This day comes the complainant and presents to the court its bond for appeal; which is approved and ordered to be filed. And it is
21 further ordered that the clerk of this court make out and certify to the Supreme Court of the United States a full and complete record of the proceedings had in this cause.

And the said bond so filed as aforesaid is in the words and figures following, to wit:

Know all men by these presents that we, Bridge, Beach and Company, a corporation, as principal, and George E. Leighton, as surety, are held and firmly bound unto the Excelsior Manufacturing Company

and Giles F. Filley, president, Chas. H. Filley, vice-president, and James W. Bell, secretary, in the full and just sum of five hundred dollars, to be paid to the said Excelsior Manufacturing Company, Giles F. Filley, president, Chas. H. Filley, vice-president, and James W. Bell, secretary, their heirs, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this 14th day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

22 Whereas lately, at the March term, 1879, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between Bridge, Beach and Company, plaintiff, and the Excelsior Manufacturing Company and others, defendants, a decree was rendered against the said plaintiff; and the said plaintiff having obtained an appeal of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said defendants citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Bridge, Beach and Company, plaintiff, shall prosecute said appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

BRIDGE, BEACH & CO.,
By GEO. E. LEIGHTON, *Vice-Pres.* [SEAL.]
GEO. E. LEIGHTON. [SEAL.]

Approved:

A. KREKEL, *Judge.*

23 COMPLAINANT'S EVIDENCE.

24 No. 180001.

The United States of America to all to whom these presents shall come:

Whereas Esek Bussey, of Troy, New York, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in cooking-stoves (he having assigned one-half his right, title, and interest in said improvement to Charles A. McLeod, of same place), a description of which invention is contained in the specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and whereas upon the examination made the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said Bussey and McLeod, their heirs and assigns, for the term of seventeen years from the eighteenth day of July, one thousand eight hundred and seventy-six, the exclusive right to make, use, and vend the said invention throughout the United States and Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this eighteenth day of July, in the year of our Lord one thousand eight

hundred and seventy-six, and of the Independence of the United States of America the one hundred and first.

(Countersigned)

CHAS. T. GORHAM,
Acting Secretary of the Interior.

[L. S.] W. H. DOOLITTLE,
Acting Commissioner of Patents.

25 UNITED STATES PATENT OFFICE.

Esek Bussey, of Troy, New York, assignor of one-half his right to Charles A. McLeod, of same place. Improvement in cooking-stoves. Specification forming part of letters patent No. 180001, dated July 18, 1876; application filed May 18, 1876.

To all whom it may concern:

Be it known that I, Esek Bussey, of the city of Troy, county of Rensselaer, and State of New York, have invented an improvement in cooking-stoves, of which the following is a specification:

The nature of my invention consists in the application to the oven of a cooking or other stove or range of an oven-shelf, so arranged that by the opening and closing of the door to the oven it is automatically dropped down or raised up.

In the accompanying drawings Figure 1 represents the oven-door of a cooking-stove open, with the oven-shelf dropped down, so that the said oven-shelf is on a plane of the bottom of the oven. Fig. 2 represents the oven-door closed, the oven-shelf being raised at right angles to the oven-bottom when said door is closed.

In said drawings A is the oven; B, bottom of oven; C, oven-shelf; D, oven-door; E, cam or projection on oven-door.

By the use of this improvement an extension is made to the bottom when the oven-door is open, so that pans or other vessels used in or in connection with the oven can be drawn outside the [illegible], which is often found to be very necessary.

I do not claim, broadly, the oven-shelf, but merely the means shown of operating said oven-shelf automatically by opening the oven-door to lower the shelf to the plane of the bottom of the oven, and closing the oven-door to raise the oven-shelf at a right angle with the bottom of the oven. Near the bottom of the oven-door I place the cam or
26 projection E, as shown in Fig. 1, which, as the oven-door is closed, presses the under side of the oven-shelf and raises it.

What I claim, and desire to secure by letters patent, is—

In combination with a stove-oven, a hinged shelf, fitted to fall outward and down automatically when the oven-door is opened, and to be raised up by closing the oven-door, adapted to operate upon it for that purpose substantially in the manner and for the purposes herein set forth.

ESEK BUSSEY.

Witnesses:
CHARLES A. MCLEOD,
HENRY LOPE.

27 United States circuit court for the eastern district of Missouri.

BRIDGE, BEACH & CO.
against
EXCELSIOR MANUFACTURING CO. ET AL. } In equity. No. 1244.

Testimony taken by consent, this 12th day of November, 1878, in the above-entitled suit, before Harry S. McLeod, a notary public in and for the county of Rensselaer and State of New York, and under the 67 rule of equity, as amended.

Present, C. S. Buntnall, for complainant; S. S. Boyd, for the defendants.

And thereupon the complainant produced ESEK BUSSEY, and he, being duly sworn, in response to interrogatories propounded by counsel, did make answer as follows:

Question 1. What is your name, age, residence, and occupation?

A. My name is Esek Bussey; age 52; my residence is the city of Troy; my occupation is that of a stove-manufacturer.

Q. 2. How long have you been engaged as a stove-manufacturer?

A. About twelve years.

(Complainant here offers in evidence a printed copy of a patent of the United States issued to Esek Bussey, of Troy, New York, No. 180001, dated July 18, 1876. It is received and marked Complainant's Exhibit A.

Complainant also offers in evidence a patent of the United States granted to Ezekiel C. Little and David H. Nation, of St. Louis, Missouri, for "improvement in stove-oven shelves," bearing date of July 9th, 1878, and numbered 205754; and the defendants stipulate herein that they have made and sold stoves containing oven-shelves of the same description and character as those described and shown in said patent prior to the commencement of this suit. The patent is received and marked Complainant's Exhibit B.)

Q. 3. Look at the patent now shown you, which is marked
28 Complainant's Exhibit A, and state whether you are the Esek Bussey that is named therein.

A. I am.

Q. 4. When did you first conceive the invention described and claimed in patent marked Complainant's Exhibit A, and what steps did you first take to give form and application to the same?

A. I conceived the invention in October, 1875; we soon after this commenced applying it to a cooking-range. We completed the wood pattern of the alterations, which included the application of the oven-shelf, before Christmas of that same year. I cannot tell whether I took off the wood patterns before Christmas or not. To the best of my recollection I took off the iron patterns about the 1st of February, 1876. I gave direction to John Hampden, our pattern-maker, about some time in November, 1875, to make the wood patterns suitable for application to the range. The wood patterns that were made at time were identical with that shown and described in the patent Complainant's Exhibit A.

Cross-examined by S. S. BOYD, Esq.:

I fix October as the date of my conception from the fact that I was in Chicago the latter part of September; remained there two weeks; and after I returned I conceived of this invention. As to giving di-

rections to the pattern-maker, I judge that it was in November, for the reason that we were about eight or ten weeks in making the alterations in the range, and when I got to this part I gave the direction to the pattern-maker. I cannot fix the date any more definitely than this. That we completed the patterns before Christmas is a matter of recollection. We completed the iron patterns ready for the sand early in the spring of 1876, and from this I am certain that the wood patterns were completed before Christmas. We shut down at or before Christmas and did not commence work again until the first week in February.

ESEK BUSSEY.

29 Subscribed and sworn to before me this 12th day of November, 1878.

H. S. McLEOD,
Notary Public, Rensl. Co., N. Y.

It is admitted that John Hampden will testify that he was the pattern-maker for Bussey & McLeod in the fall of 1875; that he made the wood patterns concerning which Mr. Bussey has testified, and that according to his recollections the said patterns were completed before Christmas, 1875; that he has no memorandum from which he testifies, but relies solely upon his memory.

30 *Deposition of William S. Bates, on behalf of compl'ts, taken November 23rd*, 1878.

Circuit court of the United States for the eastern district of Missouri.

BRIDGE, BEACH & CO.
vs.
EXCELSIOR MANUFACTURING CO., GILES F. Filey, pres't, Chas H. Filley, vice-pres't, James H. Bell, sec'y. } In equity. No. 1244.

Examination of witnesses on behalf of the complainant, under the 67th rule in equity, as amended, notice being waived.

Present, R. H. Parkinson, of Hatch & Parkinson, for the complainant, and Samuel S. Boyd, for the defendants.

By request of parties, it is ordered that these depositions be taken by question and answer; and it is agreed that these depositions may be taken before J. F. Twohig, notary public and acting special examiner herein, with the same force and effect as if he were duly commissioned by the court.

WM. S. BATES, a witness produced on behalf of the complainant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by R. H. PARKINSON, Esq., of counsel for the complainant, as follows:

Question 1. State your name, age, residence, and occupation.

A. My name is Wm. S. Bates; aged, 26 years; residence, Cincinnati, Ohio; and my occupation is that of a solicitor of patents.

Q. 2. What opportunities, if any, have you had for becoming acquainted with the mechanical arts, and what experience, if any, in comparing mechanical devices for the purpose of determining their similarity or difference in construction or mode of operation.

A. I have taken a degree of M. E., after a four years' course of

31 study at the Ren'selaer Institute, at Troy, New York. I then spent two years in Germany in the study of mechanics and engineering. On my return to this country I entered the employ of the late S. S. Fisher. While with him it was my duty to prepare applications for patents and to examine and compare various mechanical devices with each other and with written descriptions and to report on their similarity and differences. Since his death I have been employed as a solicitor of patents. I have several times been called upon to testify as an expert in patent cases.

Q. 3. Please examine the certified copy of letters patent 180001, granted Esek Bussey, assignor of half interest to Chas. A. McLeod, for improvements in cooking-stoves, July 18th, 1876, and state whether or not you understand the construction and operation of the improvement therein described and claimed.

A. I have examined the patent referred to, and believe I understand it.

(Complainant here offers in evidence a stove, which is marked Complainant's Exhibit Defendants' Stove.

It is admitted by defendant that the above-named exhibit correctly represents stoves made and sold by defendants in St. Louis, Mo., subsequent to assignment to complainants under letters patent here in suit, and prior to the commencement of this suit.)

Q. 4. Please examine Complainant's Exhibit Defendants' Stove, and state whether you understand the construction and operation of the oven-shelf therein shown, and how the same compares, in your opinion, with the improvement described and claimed in the patent above referred to, giving your reasons for any opinion you may express.

A. I have examined the exhibit, and believe I understand it. I find the part referred to consists of a shelf adapted to form an extension to the oven-bottom when the oven-door is open. The closing of the oven-door raises the shelf automatically to a position at right angles to the oven-bottom. Upon opening the door the shelf falls outward
32 and down, automatically, to a position flush with the bottom of the oven. The means for raising the shelf consists of an inclined projection at one side of it, which is impinged upon by a projection on the oven-door, The device described and claimed in the patent referred to consists in a shelf adapted to form an extension to the oven-bottom when the oven-door is open, and to be raised up at right angles to the oven-bottom by the closing of the door, and to be dropped outward and down automatically when the door is opened, in combination with the oven. I am of the opinion that the Complainant's Exhibit Defendants' Stove contains the devices described and claimed in the complainant's patent, for the reason that it contains, in combination with a stove-oven, a hinged shelf fitted to fall outward and down automatically when the oven-door is opened, and to be raised up by closing the oven-door. The only difference which I find between the two is that in the patent the projection on the door for raising the shelf operates on the edge and bottom of the shelf, while in defendants' stove the projection on the door operates on the edge and bottom of a raised portion of the shelf, and I am of the opinion that this difference is an immaterial one, and does not affect the operation of the device, its only effect being to slightly decrease the area of the shelf.

Q. 5. Please examine defendants' exhibits, Edward Thomason English patents Nos. 2142 and 2282 Vrooman patent No. 119434, Defendants' Exhibit Burke Range, Paris patent No. 113556, Carew patent No. 194472, and state whether you find in either of said exhibits the inven-

tion described and claimed in complainant's patent above referred to, giving you reasons for any opinion you may express.

A. I have examined the various exhibits referred to, and do not find in them the invention described and claimed in complainant's patent.

The Thomason patent 2142 shows and describes a pair of steps for a carriage, designed to be raised by the door. The steps are attached to a frame which is hinged to the door-sill so as to hang down outside
33 the carriage; the steps are pivoted to this frame so as to fold up flat against it. Its action is as follows: The pintle of one of the frame-hinges is extended and has a gear or pinion on its end. A toothed sector pivoted to the door-frame engages with this pinion, and a projection on the door impinges against this sector and operates it. On closing the door the sector revolves the gear, thus turning the frame on its hinges. The moving of the frame releases a spring, which spring folds up the steps flat against the frame, and folds the frame over on itself like a clothes-horse. The frame at the same time is turned up on its hinges into the carriage by the sector and gear, as before described. When the door is opened the frame can be turned down by hand. I am of the opinion that this patent does not contain the invention described and claimed in the complainant's patent, for the reason that it does not contain a stove-oven, that it does not contain a hinged shelf fitted to fall outward and down automatically, by the opening of the oven-door or any door, or to be raised up by closing the oven-door. The only device in this patent which is operated by the door is the hanging frame, and this frame could not be adapted to an oven so as to form a shelf thereto.

The Thomason patent 2282 purports to be an improvement on the patent just spoken of, the improvement consisting in the substitution of a bent lever for the toothed sector and pinion of the before-mentioned patent.

This second Thomason device is also a carriage-step, consisting of a hanging frame with steps attached, as in the first one, and I am of the opinion that it does not contain the invention described and claimed in complainant's patent, for the reason already specified in discussing the first Thomason patent.

The Carew patent I find to be for a weather-strip. This strip is hinged to the threshold of the door so as to lie flat on the threshold when the door is open, and to occupy an inclined position, leaning against the door, when the door is shut, its object being to prevent snow, &c., from driving in under the door. It is raised up to this inclined posi-
34 tion when the door is closed by a finger on the door, which finger is inclined or wedge-shaped, so that its point is inserted under the edge of the strip, and thus lifts it, its action being that of a wedge. I am of the opinion that this patent does not contain the invention described and claimed in the complainant's patent, for the reason that it does not contain an oven nor a hinged shelf fitted to fall outward and down, automatically, when an oven-door is opened, nor to be raised by the closing of the oven-door. The weather-strip shown in the patent is designed to lie flat on a threshold, and if attached to an oven as it is attached to the threshold would not project beyond its edge, and therefore would not subserve the purpose of complainant's shelf. Nor would it be flush with the bottom of the oven. The action of the door on this strip is different from that of complainant's door on his shelf; the door in the Carew patent closes square against the strip. Complainant's door closes against a shelf from one side. This necessitates the shelf being of different form from the strip, as otherwise the door would jam

against it, and could not be closed without first lifting it by the hand. Neither of these devices could be used in place of the oven.

The Paris patent shows and describes a stove which contains what ie called in the patent a "roasting-rack," and is described as being "mads so that it will let down horizontally or turn up perpendicularly, and so that when turned up the oven-door may shut over it."

The description and drawing of this device are very meagre. Its construction is thus described: "The rack is supported by the combination of the side or jamb of the stove with the oven-bottom, which unite at their point of contract to form sockets or slots for one, two, or more projecting arms of said rack. This rack is movable, so that when not in use it can be laid away, and the oven-door may be made to shut over the open sockets or slots formed for its reception. This rack may be attached simply to the sides of the stove, or to the open bottom only, if so desired." This is all the patent says about this de-
35 vice. It describes no arrangements for automatically lifting this rack, nor does it appear that the rack would fall outward and down, automatically, when the door is opened. On the contrary, the inference is that it is to be let down and turned up by hand, and I think it would require considerable ingenuity to adapt this rack to be operated by the opening and closing of the door. For these reasons I am of the opinion that it does not embody the invention described and claimed in the complainant's patent.

The Vrooman patent is for a cover for the fuel-reservoir of a heating-stove. It consists of a flap which covers the fuel-reservoir. This flap is hinged at one side, and has a spur projecting upward from between the hinges. When the top of the stove, which is pivoted at one side, is slid from its place, its lower edge catches the spur on the flap and turns up the flap, thus opening the fuel-reservoir. This patent shows and describes no oven, no shelf, and no door. It therefore cannot contain the invention in complainant's patent. The hinged flap of the Vrooman patent is pulled up by the sliding away of a cover. Complainant's shelf is lifted up by the motion toward it of a door, and neither device could be adapted to the purpose of the other. I am, therefore, of the opinion that the Vrooman patent does not contain the invention described and claimed in the complainant's patent.

The model "Exhibit Burke Range" I understand to be a model of parts of a cooking-stove. The part to which I suppose I am referred is a hinged flap in the back of the ash-box, marked A. This flap seems to represent a damper, and is opened by a finger on the ash-door when the door is closed, and closes by its own weight when the door is opened. The part marked C in the model I understand to be the oven. This oven has no door, and it has no shelf which can form an extension to the oven-bottom. The damper in the ash-box has its edge turned up at the side next to the door, so that the finger on the door will strike this inclined edge and thus open the damper. This ash-door and
36 damper differ very materially in their mutual actions from complainant's oven door and shelf. The ash-door when closed occupies a position at right angles to the damper. Complainant's oven-door when closed occupies a position parallel to his shelf, and neither of these devices would be operative in the position of the other. For these reasons I am of the opinion that the "Burke range" does not embody the invention described and claimed in the complainant's patent.

WM. S. BATES.

The defendants' counsel here states upon the record that for the purposes of this case the title of the complainant to the patent in suit herein is admitted to be good.

WM. S. BATES.

37 *Defendants' evidence.*

TESTIMONY.

Present, John E. Hatch, esq., counsel for complainant; S. S. Boyd, esq., counsel for defendants.

NEW YORK, *August 16th*, 1878.

It is hereby stipulated that an order may be entered appointing Robert Bonynge, of 93–99 Nassau street, New York City, special examiner, to take testimony in the above case.

The following witnesses were sworn before me under and in pursuance of the authority given to me by the foregoing stipulation:

JOHN BURROWS, being sworn and examined by Mr. BOYD, deposes and say:

My name is John Burrows; age, 29; residence, 193 North Pearl street, Williamsburg, Brooklyn; pattern-maker by trade.

Int. 1. State whether you are acquainted with P. N. Burke, of New York.

A. Yes, sir; I am acquainted with him.

Int. 2. Please look at the model handed you marked "Defendants' Exhibit Burke Range," and state what it represents, and by whom it was made.

A. I made it.

Int. 3. From what did you make it; did you make it from a large range.

A. I did.

Int. 4. Where was it, and whose range was it?

A. Mr. Burke's range.

Int. 5. At what place?

A. 90 Fulton street.

Int. 6. Where was the range?

A. 208 Water street.

Int. 7. Look at the damper marked A and the finger marked B, and state whether or not that resembles the damper and finger upon any range that you have seen, and, if so, whose range was it?

38 A. I have never seen this thumb and damper on any other range only P. N. Burke's.

Int. 8. Please state when you first saw the damper and finger that you have spoken of.

A. I made this damper and finger between the months of November, 1875, and February, 1876. I made the original patterns. That is the time they were made, between those times.

(Mr. Hatch, counsel for complainant, objects to the testimony of this witness if he is called for the purpose of showing prior knowledge or use, for the reason that the name and residence of the witness is not set up in the answer as required by the statute.)

Int. 9. For whom did you make the original patterns for this finger and damper?

A. I made them for Mr. P. N. Burke.

Int. 10. What were those patterns for; what kind of patterns were they?

A. They were range patterns.

Int. 11. Do you know what was the size of the patterns?

A. I do not remember what the size was. I could not tell you.

Int. 12. That is, were they large, or model patterns merely?

A. They were large patterns.

Int. 13. Do you know anything about what was done with those patterns afterwards?

A. Not after they went out of our hands, out of the shop.

Int. 14. When they went from your shop, to whom were they delivered?

A. They were delivered to Mr. Burke. I delivered some of them myself here in the store.

Cross-examination by Mr. HATCH:

X-int. 1. Did you make this "Exhibit Burke Range" from a model or from a large range?

A. I made it from a small model Mr. Burke had, or from a large range; it is immaterial.

X-int. 2. Are there any ranges in the store such as those from which you made this model?

A. Yes, sir; there are.

39 X-int. 3. Will you produce one of the dampers A as used in the range?

A. Yes.

(Damper produced and marked "Defendants' Exhibit Burke Automatic Damper, August 16th, 1878, R. B.")

X-int. 4. Which is the upper side of this damper as it is used?

A. The one upon which the paper is pasted, and having the lip projecting up from the top.

X-int. 5. Why is it made of two pieces?

A. Simply to cast it straighter—to make it cast straighter. If it is all one piece it would have a tendency to bend.

X-int. 6. Why is it made of an upward inclination at the outer edge?

A. Merely to strengthen it.

X-int. 7. To what size of range does this damper belong?

A. Number 3, or 8-inch.

X-int. 8. In what part of the stove is this used?

A. It was used in one of the side flues, or the exterior front oven-plate or ash-plate.

X-int. 9. What compartment of the stove?

A. Next to the grate, as shown on the model.

X-int. 10. How do you fix the date when you made the patterns for this?

A. I fix it from the time Mr. Burrows' books show, and can swear pretty accurately that was the time it commenced, the month of November, by referring to his books.

X-int. 11. Have you seen Mr. Burrows' books?

A. Yes, sir; I have.

X-int. 12. Where did you get it up or make it?

A. 90 Fulton street, New York City.

X-int. 13. Who were you working with?

A. There was a man named Case working on the same work, but he did not do anything on that, because he had nothing to do with it.

X-int. 14. What is his full name?

A. William.

X-int. 15. Under whose directions did you make it up?

40 A. Under Mr. Burrows' directions.

X-int. 16. You have no data here at this examination to fix the date when you made this device?

A. I have not.

PETER N. BURKE, being sworn and examined by Mr. BOYD, deposes and says:

My name is Peter N. Burke; age, forty-eight; profession, merchant; residence, South Orange, New Jersey; place of business, 208 Water street.

Int. 1. What is you business?

A. Manufacturing stoves—manufacturing and selling stoves.

Int. 2. How long have you been engaged in that business?

A. Going on twenty-nine years.

Int. 3. Please look at the model "Burke Range," and state what it represents, referring particularly to the damper marked A and the finger marked B.

(Mr. Hatch, counsel for complainants, object to the testimony of this witness if called for the purpose of showing prior knowledge or use, for the reason that the alleged use by the said witness is not pleaded in accordance with the statute.

Mr. Boyd, defendants' counsel, here gives notice that as soon as a hearing can be had he shall move for leave to amend the answer herein by setting up the residence of this witness as South Orange, New Jersey.

Question repeated.)

A. Automatic damper used in my range, and known as "Burke's patent hot-air range."

Int. 4. State when you first conceived the idea of that mode of operating the damper.

A. Its mechanical application took place in the month of November, 1875, and was embodied in my patterns before the 8th of January, 1876. The idea of an automatic damper presented itself to my mind at the completion of my first range, made at Boston in 1874. In November,

1875, in conversation with William Burrows, pattern-maker, the

41 idea was conveyed to him by me and embodied in the wooden pattern, from which was made "Exhibit Burke's Automatic Damper," within the period previously specified.

Int. 5. When first was this damper and its actuating finger first introduced into one of your ranges?

A. I think from the middle of January, 1876, to the first of February, 1876. I had one introduced into one of my former pattern ranges in use on the floor of my show-room.

Int. 6. Do you know what became of that first range?

A. It must have been disposed of, but to whom I cannot say. An investigation of my books might develope the fact to whom it was sold, or the books of Burke & McKee, for at that time the firm was Burke & McKee.

Int. 7. To whom was the first range embodying this construction sold or disposed of?

A. According to my recollection, the first, I am confident, was placed to my counsel, Thomas Darlington.

Int. 8. On what day?

A. According to our books, April 15th, 1876.

Int. 9. What books do you refer to?

A. I refer to my ledger and journal.

Int. 10. Will you please turn to those and show us the entry?

A. The first book I produce is my delivery-book, and on page 235, under date of April 15th, 1876, is the following entry: "T. Darlington, Laushe's express, 602 High street, Newark, New Jersey, 1 No. 3 Burke range, H. C." (meaning hot closet). On the margin, in pencil, the name "Remington," who was the receiver of Laushe's express by whom the same was shipped. Then on page 942 of the journal, under date April 15th, 1876, is the following entry: "N. 235, Thomas Darlington, to 1 No. 3 Burke range, hot C., $31.00." On page 944 of the ledger is the following entry; "Thomas Darlington, 1876, April 15th, to mdse., 942, $39.75."

Int. 11. Have you any memorandum from which you fix the time when these patterns for the range were completed by Mr. Burrows?

A. I have his bills and also my pattern account showing the wages paid mechanics in fitting up the patterns.

42 Int. 12. Will you produce them?

A. The first bill of Burrows comes in under December 3rd, 1875. I was remodeling my whole range at that time.

Int. 13. What was done with the patterns after they were delivered to you by Mr. Burrows—the wooden patterns?

A. They were sent to the foundries, when the iron patterns were taken from them.

Int. 14. You say that one of these stoves having this device upon it was actually made in January?

A. One of those automatic dampers was in operation on one of my former pattern ranges, I think, in January.

Int. 15. And from what do you fix that date, January?

A. From the dates at which I had the patterns taken off at the foundry, and also by having my pattern-filers to work here.

Int. 16. Who were your pattern-filers from which you fix the date?

A. Edward Shields and James Sickles.

Int. 17. Where were your pattern-filers at work?

A. In my work-shop, 208 Water street.

Int. 18. Are those pattern-filers both with you now?

A. No, sir.

Int. 19. Which one is not here?

A. Neither of them.

Int. 20. When did either of them leave?

A. James Sickles, one of my pattern-filers, left March 3rd, 1876; Edward Shields, my other pattern-filer, left March 11th, 1876, according to my books. The process of the completion of the patterns is as follows: After the wooden patterns are completed they are sent to the foundry and from which fac similes are taken in iron; those iron patterns are then filed up, jointed, and fitted on boards known as pattern or follow boards; these patterns and follow boards are then used for casting the regular stoves or ranges from.

Int. 21. Since those ranges having this automatic damper were received from the foundry what has been done with them?

A. They were duly fitted up and prepared for the regular ranges to be taken from or cast from.

43 Int. 22. After these stoves or ranges were taken from those patterns what was done with those ranges?

A. Sold all over the country.

(Mr. Boyd, counsel for defendants, offer in evidence a section of the

stove, which was marked "Defendants' Exhibit Burke's Drawing, August 16th, 1878, R. B.")

Cross-examination by Mr. HATCH:

X-int. 1. At what foundry did you have the iron patterns cast from those wooden patterns made for you by Burrows?

A. I think I had that taken off by Creamer & Sons, Brooklyn.

X-int. 2. Please examine and see if you have the bills for the work of the foundry; if so, produce them.

A. Yes, sir; these are the bills, so far as I have any recollection of them.

(Witness produces seventeen bills, which were marked, respectively, "Complainants' Creamer Bills," 1 to 17, inclusive, "August 16th, '78, R. B."

X-int. 3. How do you know that this range sold to Darlington had the peculiar damper and finger shown in the model?

A. Because it had to be specially changed over from an old pattern range to one with this automatic arrangement.

X-int. 4. Before it was sold or after it was sold did you make this change?

A. Previous to its being delivered.

X-int. 5. As for this, then, you rely simply on your memory?

A. I rely upon my specially superintending it personally.

X-int. 6. You have, however, no written data or anything to rely upon except your memory that this was attached to the Darlington range?

A. I have the porter in my employ to whom the instructions were given, and he and I superintended in making the alterations.

X-int. 7. So far as your own evidence is concerned, have you anything to rely upon except your memory to show that the peculiar damper and finger of the model were put in the Darlington range?

A. My books specify nothing which would show that fact.

44 X-int. 8. Have you seen the Darlington range since it was put in?

A. I have not.

X-int. 9. Is it not possible that you may be mistaken as to the range which you had changed?

A. It is not possible.

X-int. 10. Is the damper shown in the model patented?

A. It is not patented.

X-int. 11. Did you never apply for a patent of it?

A. I did not.

X-int. 12. Then so far as the part of the range is concerned, that is, the damper and finger, you have no patent covering either of those parts?

A. No, sir; I have not.

X-int. 13. Who first wrote you in regard to this case?

A. I think it was Holbrook—no, it was not. With regard to this case, I did not know there was any such case until Mr. Boyd called on me. I had a communication from Holbrook, who used to be a pattern-maker in Boston, making inquiries in regard to this damper, but not specifying any case. Holbrook called on me on his return from Troy, after being to Washington, and merely spoke to me in general terms with regard to the broadness of the claim that a certain party there, Bussey, McLeod & Co., had set up, when I showed him distinctly that it was a mere application of my principle as involved in my automatic damper.

X-int. 14. Is Holbrook's business not in St. Louis?

A. I know not, sir.

X-int. 15. You say you think that the damper and finger were on a range that you had in your store here between the 1st of January and 1st of February, 1876?

A. I do.

X-int. 16. Now, to whom did you sell that range?

A. I cannot say, sir. I might be able to determine by referring to my books, but I cannot say.

X-int. 17. Will you refer to your books, and see if you can determine?

A. (Witness does so.) I cannot find it.

45 X-int. 18. Do you know where Edward Shields and James Sickles are now?

A. The former, I think, works with the Simmons Manufacturing Company.

X-int. 19. Where is it located?

A. At the foundry in Jersey City, New Jersey. The latter, I think, works on a farm with his father, at Stuyvesant, Vinango County, State of New York.

WILLIAM BURROWS, being sworn and examined by Mr. BOYD, deposes and says:

My name is William Burrows; age, forty; occupation, pattern-maker; residence, 206 South 5th street, Brooklyn.

Int. 1. Please look at the model "Burke Range," and particularly at the automatic damper A and finger B, and state when first you saw a model of that kind, or a stove having those devices?

A. In referring to a memorandum, I find that we placed that device on a stove for Mr. Burke in the winter of 1876.

Int. 2. How do you mean you placed the device on a stove; what did you do?

A. Made Mr. Burke a damper to open and close automatically by opening and shutting the door.

Int. 3. Do you mean you made the iron stove for him?

A. No, sir; made the wooden stove.

Int. 4. Do you know when you began on those patterns?

A. In December, 1875.

Int. 5. Who is John Burrows?

A. My brother.

Int. 6. Who actually made the patterns?

A. John Burrows, and had others to help him. He placed the device on the stove called the automatic damper.

Int. 7. Please look at the bills now shown you marked "Defendants' Exhibit Burrows' Bills," 1, 2, 3, 4, and 5, and state what they are.

A. Those are for labor performed on that stove pattern and such patterns as the automatic pattern was applied to; the damper and doors would be finished about the last of the set of patterns.

46 Int. 8. Does this bill "Burrows, Exhibit No. 5," refer to the same thing?

A. Yes; but the date should be January, 1876, and not 1875. We never done any work for Mr. Burke as early as that.

Int. 9. Whose signature is attached to all of those bills?

A. Mine, sir.

Cross-examination by Mr. HATCH:

X-int. 1. Do these five bills that you have put in relate exclusively to work on that range?

A. They do.

X-int. 2. Were there any other bills for it?

A. There might have been other bills for little odd jobs done on different parts of the range, but nothing to amount to anything.

X-int. 3. What is there in these bills that enables you to state that it refers to this particular range?

A. That was the first job we did for Mr. Burke, the making of that range or the alteration of it; therefore we distinctly remember putting the device referred to on that particular range.

X-int. 4. Who gave you directions as to how the device was to be put on?

A. Mr. Burke.

X-int. 5. What did he give you to work from in regard to that damper; did he give you a sketch or a model, or what?

A. I made a drawing to work from according to Mr. Burke's directions.

X-int. 6. State as near as you can just the directions that he gave you in the first place to direct your actions in regard to that damper.

A. I cannot recollect as long as that.

X-int. 7. You cannot recollect the language, but as closely as you can the directions that he gave you.

A. Mr. Burke said he wished that damper to work automatically, and made some suggestions, among others, that it was to close when the door was opened and open when the door was closed.

X-int. 8. What was the purpose of that damper in a stove?

A. I cannot tell you. If you ask me the purpose in that stove I will tell you.

47 X-int. 9. What was the purpose of the damper in that stove, that is, what was the purpose of having that damper open when the door was closed and shut when the door was open?

A. When the door is open—at least what I supposed it was put in for, when Mr. Burke had it put in—when the door was open, if the damper was open, it would admit a current of air to go under the fire, and through this damper here it leads into the oven. It was also to prevent, if they shook the grate, ashes to go through that aperture into the oven, but the door being open and the damper closed made a close joint there and prevented any ashes or draft to go into the oven.

(The oven was marked C on the model.)

X-int. 10. When Mr. Burke came in and gave you instructions about this damper, as I understand you, he said he wanted a damper placed there that would be operated by the door so as to be open when the door was closed and closed when the door was open, and left to you the designing of the mechanism by which to accomplish that, as I understand you; is not that correct?

A. Well, Mr. Burke gave me certain instructions how he thought it might be done, but I cannot remember his exact language; but the idea given to a mechanic of what wants to be accomplished will always enable him to work out the object sought, if he is a good mechanic, which I profess to be.

JOHN M'CORD, being duly sworn and examined by Mr. BOYD, deposes and says:

My name is John McCord; age, thirty-three; reside in New York; business, porter for P. N. Burke.

Int. 1. Please look at the model marked "Burke Range," and state, if you know, when the automatic damper was first put on it.

(Mr. Hatch, counsel for complainant, objects to the testimony if the witness is called for the purpose of showing prior knowledge and belief, for the reason that the name and residence of the witness is not pleaded in the answer in accordance with the statute.)

A. Well, if I could see the books I could tell when; I know the name, but I do not know the date.

48 Int. 1. Who put the first one on?

A. I did.

Int. I. Did you have any one to assist you?

A. I don't suppose there was.

Int. 4. Was there anybody employed here at that time?

A. Yes, sir; Mr. Sickles and Mr. Shields were employed here.

Int. 5. Doing what?

A. Filing patterns and fitting patterns.

Int. 6. Do you know how long before Mr. Sickles and Mr. Shields left it was before you put this automatic damper on?

A. I think it was about the last week that Mr. Sickles was here. The reason I remember so well is that there were two plates taken; one I fitted from the original casting and put it in a range and put it on the sample-board, and Mr. Sickles told me when I went to chip it; it was too long—I was going to file it and he said to chip it.

Int. 7. Do you remember anything about a range sold to Thomas Darlington?

A. Yes, sir; I fitted also Mr. Darlington's range.

Int. 8. What sort of a damper?

A. Automatic damper. I put in an automatic damper and finger on the door. I refer to the "Exhibit Burke Drawing," the automatic damper A and the finger B.

Cross-examination by Mr. HATCH:

X-int. 1. When do you say you put this damper and finger on the Darlington stove?

A. That is some time ago; I could not tell you the date; if I saw the book I could tell you the date.

X-int. 2. Under whose direction did you do that?

A. Mr. Burke's, I believe; I asked him if I could do it and he said yes, and it was done.

X-int. 3. Who saw you doing that—who was about while you were doing it?

A. I could not say any one was.

X-int. 4. Was not Shields?

A. No; Shields was not there at the time. It was after Shields had left here I fixed Darlington's range.

49 X-int. 5. You speak of putting a damper to a stove while Shields was here?

A. Yes.

X-int. 6. To whom was that stove sold, if you know?

A. I really cannot say; we brought the stove down here and used it as a sample; put a fire in it and used it there; and to whom it was really sold I cannot say; I don't remember.

X-int. 7. How long did it stand there, do you think?

A. I think it was there a few weeks.

X-int. 8. You do not know to whom it was sold?

A. No, sir.

X-int. 9. Did not see it delivered?

A. It is likely that I saw it delivered. It was sold the same as the other stoves; that is the reason I do not recollect to whom it was sold.

X-int. 10. How long have you worked here?

A. About thirteen years.

X-int. 11. Do you know what time Shields and Sickles left?

A. I know that Sickles was here a little over six weeks, and Shields was here either four or five days after him. I could not possibly state the dates.

EDWARD F. MEYERS, being duly sworn and examined by Mr. BOYD, deposes and says:

My name is Edward F. Meyers; age, 30; residence, New York City; occupation, book-keeper and cashier for P. N. Purke.

Int. 1. What was your occupation in 1875 and 1876?

A. Book-keeper and cashier for Burke & McKee.

Int. 2. What Burke was that?

A. P. N. Burke.

Int. 3. Please state when first you saw, if at all, a range having the automatic damper A and finger B shown in the "Exhibit Burke Range."

A. I am under the impression I saw patterns for that automatic damper and finger put together in the month of January, 1876.

50 Int. 4. What leads you to have that impression?

A. From my knowledge of the fact that the patterns of the range were gotten out at that time.

Int. 5. Can you tell when you saw a stove having it actually attached?

A. In February or March of that year.

Int. 6. What enables you to fix the date as February or March?

A. I am not positive on that point, February or March. I am positive that I saw one in April.

Int. 7. What enables you to be positive that you saw one in April?

A. Because I shipped one to Mr. Darlington in April.

Int. 8. How do you know you shipped one for Mr. Darlington in April?

A. From our delivery-books.

Int. 9. In whose handwriting are the entries from the book which have been introduced in evidence by Mr. Burke?

A. Partly in mine and partly in that of Mr. Betts; that is, the delivery-book is in Mr Betts' handwriting, part of it, and part in mine.

Int. 10. In whose handwriting is the Darlington entry?

A. Mr. Betts', that is, on the delivery-book.

Int. 11. Do you know who fixed the first automatic damper and finger upon Mr. Burke's range—what workman?

A. I think it was our Mr. McCord; that is, you are speaking of the range and not the pattern?

Int. 12. Do you know who the filers were at the time that attachment was made?

A. Yes.

Int. 13. Who?

A. Edward Shields and James Sickles.

Int. 14. Can you state how long after that attachment was made it was before Shields and Sickles left the employ of Mr. Burke?

A. Yes, sir.

Int. 15. How long?

A. Sickles left the 3rd day of March; Shields left the 11th.

Int. 16. The question is, how long after this attachment was it that Shields and Sickles left?

51 A. I could not say positively.

Int. 17. Do you know outside of the books, or from entries in the books, when the work upon the patterns for this change in the range was commenced?

A. Yes; I can tell from the books when it was commenced.

Int. 18. The entries from which you gain that knowledge are the ones already referred to, are they?

A. Yes, sir.

Cross-examination by Mr. HATCH:

X-int. 1. How do you know that the Darlington range had the damper and finger?

A. I speak from memory.

X-int. 2. From what patterns was the Darlington range made; the new patterns or the old set?

A. The old set.

X-int. 3. That is, it was not a range made with the new style of patterns which were afterwards used with the damper and finger?

A. It was the old range with the automatic damper and finger put in.

X-int. 4. How did the old range differ from the new?

A. In general appearance, the size of its top, and from the fact that the dampers were changed in it.

X-int. 5. Have you a cut showing the stove as made by the old style patterns to which you referred?

A. Yes; I hereby produce it.

(The cut was marked "Complainant's Exhibit Burke Old Range, August 16th, 1878, R. B.")

X-int. 6. Did you see that new damper and finger on the Darlington range yourself?

A. Yes, sir.

X-int. 7. Was there any range sold after this sale to Darlington that had the old patterns with the new damper?

A. Not to my knowledge.

X-int. 8. Where did you see the patterns put together in January?

A. In our work-shop, 208 Water street, in the possession of Mr. Burke.

52 X-int. 9. At the particular time that you saw them were they the wooden patterns or were they the iron patterns?

A. They were the iron patterns; I never saw the wooden patterns put together.

X-int. 10. Why do you think you saw the iron patterns in January?

A. As far as I can remember, as soon as the patterns were completed they were put together to see how they would fit.

X-int. 11. Then you think you saw them in January because they were put together as soon as they were completed, and you think they were completed in January?

A. Yes.

X-int. 12. If then the patterns were not completed until after January, then you did not see them until after that?

A. No, sir.

X-int. 13. Then there is no special incident connected with the month of January you refer to, but simply that you think that it was as soon as they were completed?

A. Except from the fact that our bills to Mr. Burrows show that he concluded his work at that time.

X-int. 14. How many of those ranges of the old style with the new damper are you positive that you, yourself, have seen?

A. Two, sir.

X-int. 15. I understand you to say in your direct examination that you are positive of seeing this range that was sold to Darlington in April, but that you are not positive in regard to any one before that, so far as your own knowledge is concerned?

A. That is correct, sir.

(The signatures to the above depositions were waived.)

I, the special examiner agreed to by the counsel for the respective parties under and in pursuance of the following stipulation, do hereby certify that the depositions of the witnesses and exhibits hereunto annexed were taken before me and were by me reduced to writing, and the same are hereby certified by me to be correct.

ROBERT BONYNGE,
93–99 *Nassau Street, New York City.*

53 *Stipulation.*

United States circuit court in and for the eastern district of Missouri.

BRIDGE, BEACH & CO., COMPLAINANTS,
vs.
EXCELSIOR M'F'G CO. ET AL., DEFENDANTS.
} In equity. No. 1244.

It is hereby stipulated that the defendants may use as evidence at the hearing of the above-entitled case, with the same force and effect as if regularly offered and introduced as evidence before a master, certified copies of the following English letters patent:

Edward Thomason, "Steps for coaches," dated 31 Oct., 1796, No. 2142.

Edward Thomason, "Steps for coaches," dated on or about December 22, 1798, No. 2282.

Also, uncertified printed Patent Office copies of the following U. S. letters patent:

H. W. Carew, "Weather-strip," dated 7 Sept., 1869, No. 94472.

D. E. Paris, "Reservoir cook-stove," dated April 11, 1871, No. 113556.

Jacob V. Vrooman, "Stove-covers," dated 26 Sept., 1871, No. 119434.

HATCH & PARKINSON,
For Complainant.
SAM'L S. BOYD,
Defendants' Solicitor.

54 DEFENDANTS' EXHIBITS.

Defendants' Exhibit Burrows 1.

NEW YORK, *Dec.* 3*rd*, 1875.

[Stove ranges, hot-air furnace, and fireplace-heater patterns made to order. Designing and drawing. Experimental machinery of every description done at the shortest notice and on reasonable terms.]

Bought of Wm. Burrows, pattern and model maker, No. 10 Fulton street, near Gold.

Altering pattern & cutting monogram $29 30
Rec'd payment,

WM. BURROWS.

Defendants' Exhibit Burrows 2.

NEW YORK, *December 17th*, 1875.

(Same heading.)

Dec. 6th.	Altering range panel	1	12
"	Repairing patterns, 1¼ days' labor, 4.50	5	62
	6¼ days' labor on altering range patterns, 4.50	28	12
		34	86

Rec'd payment,

WM. BURROWS.

55 *Defendants' Exhibit Burrows 3.*

NEW YORK, *December 24th*, 1875.

(Same heading.)

6¼ days' labor, altering			
Altering range patterns, serving letters, &c., 4.50		28	12
Balance on bill, 18th			86
		28	98

Rec'd payment,

WM. BURROWS.

Defendants' Exhibit Burrows 4.

NEW YORK, *December 31st*, 1875.

(Same heading.)

51 hours' labor on range patterns, 45c. 22 95

Rec'd payment,

WM. BURROWS.

Defendants' Exhibit Burrows 5.

NEW YORK, *January 8th*, 1876.

(Same heading.)

6½ days' labor on stove pattern, 4.50 ..... $29 25

Rec'd payment,

WM. BURROWS.

56, 57 *Defendants' Exhibit Thomason's Patent.*

English letters patent granted Edward Thomason, dated October 31, 1796, No. 2142. Carriage-steps.

To all whom these presents shall come:

I, Edward Thomason, of Birmingham, in the county of Harwick, button-maker, send greeting:

Whereas his present majesty King George the Third, by his letters patent under the great seal of Great Britain, bearing date at Westmin-

ster, the thirty-first day of October last past, did give and grant unto me, the said Edward Thomason, my executors, administrators, and assigns, his royal will and license that I should and lawfully might make, use, exercise, and vend, during the term of years therein expressed, within that part of Great Britain called England, the Dominion of Wales, and town of Berwick-upon-Tweed, my "new invented and improved method of making steps for coaches, landaus, chariots, gigs, curricles, chaises, and all other carriages to which steps are used," in which letters patent a proviso is contained that if I, the said Edward Thomason, should not particularly describe and ascertain the nature of my said invention, and in what manner the same is to be performed, by an instrument in writing under my hand and seal, to be inrolled in his majesty's high court of chancery within one calendar month next after the date of the said letters patent, then such letters patent should be void, as in and by the same (reference being had thereto) will appear:

Now know ye that I, the said Edward Thomason, in compliance with the aforesaid proviso, do hereby, in the first place, declare that my said invention is an improved step, where only one step shall be used, and where more than one step shall be used, then improved steps, for all kinds of carriages to which a step or steps shall be used, and the particular advantage of which is ease and facility in ascending to and descending from any carriage to which the same
59 shall be affixed, as a person seated in the carriage to which the said steps shall be affixed may take them up and put the same down again without the assistance of any person whatever, whereby the great danger attending a coachman or postillion leaving his horses or being thrown from his seat, or of horses taking fright, is removed, and the said steps are so contrived that they take no more room in a carriage and are full as light as those made upon the old or former principle, which invention is described by the drawings contained in the margin of these presents, and the description hereinafter written and set forth respecting the same, that is to say:

(Here follows diagram marked page 58.)

I, the said Edward Thomason, do hereby also further declare that the drawing in the margin of these presents marked No. 1 represents a step of my said invention fixed to a carriage and put down ready for any person to ascend the same; the component parts of which are described in seven sections, also set in the margin of these presents, and marked, respectively, No. 3, 4, 5, 6, 7, 8, and 9, each of which sections corresponds with the part having the like number or mark affixed to it in the said drawing marked No. 1. The drawing in the margin of these presents marked A represents a small stud or nose screwed to the inside of the door of the carriage to which the said steps are to be used, which stud or nose acts against a similar stud or nose at the drawing in the said margin marked B, in section marked No. 3, and the said section marked No. 3 shows a lever fastened to the inside of the door-case of the carriage by a screw or pin, drawn in the said margin and marked C, on which it acts. The said stud or nose marked A also, by its pressure on the stud or nose marked B, when the door is shutting, gives action to the cogs represented in the margin of these presents by the drawings marked respectively D and E, and thereby forces the said steps to their proper and convenient place in the carriage. The drawing in the said margin marked D represents teeth at the bottom of the said lever in section marked No. 3 which are received into the cog-wheel at the draw-

ing in the said margin marked E, in section No. 4, and are put into action by the taking up or putting down of the said steps. The drawing in the said margin marked F is an arm or shaft to the above-mentioned cog-wheel marked E, which is made square at G, as in the drawing thereof in the said margin, and is received into the hinge represented by the drawing in the said margin marked H, through which it passes, and is fastened by a screw or rivet. The drawings in the said margin marked I I represent the sides of the frame of the upper step, to which the hinges are attached as in section marked No. 6. The drawings in the said margin marked respectively K K are sockets at the bottom of the said frame marked I I, through which the sides of the second frame (represented in the margin of these presents by the drawings marked O O) passes and works in the manner hereinafter described. The drawing in the said margin marked L represents a small bar screwed or riveted through the sides marked I I to keep such sides in place. The drawing in the said margin marked M also represents a bar screwed or fastened in like manner as the other bar above described and marked L, answering exactly the same purpose, and upon or to this last-mentioned bar, marked M, the upper step is fixed and works. The drawings in the said margin marked respectively N N shoulders on which the upper step before described falls, and which supports the said step when down. The drawings in the said margin marked respectively O O, in section No. 7, are the sides of the second step, which pass through the above-mentioned sockets marked K K, in section No. 6, and after passing through the said sockets the bar represented in the said margin of these presents by the letter P, is affixed to the said sides marked O O. The drawing in the said margin marked Q is a bar screwed or riveted through the said sides marked O O, on which the second step is fixed and works, which step is supported when down by the shoulders represented in the drawings in the said margin marked R R. The section marked No. 8 shows how the frame of the lower step, marked O O, passes through the said sockets of the upper frame, marked I I, at the letters K K. Sections marked No. 5 are the screws, made with shoulders, the screw ends of which pass through the bottom part of the frame of the carriage, and are screwed under by nut-screws, whereby the step or steps is or are firmly fixed to the carriage, and the other ends are received into the hinge marked H, and form part thereof. Section marked No. 9 shows one side of the frame marked I I, with a double crank and spring. The drawing in the said margin marked S is the spring, which is screwed at one end to the under side of the hinge marked H; the other end acts against the crank, represented in the said margin by the drawing T, and gives motion to the crank at its respective axis, represented by the drawings in the said margin marked U, W, and X, at which last place it is connected to the back part of the upper step by a loop, which is shown in the said drawing marked No. 1. When the step or steps is or are down the weight thereof prevents the spring acting, except when the door of the carriage is shutting, at which time it is relieved from such weight, and in its action draws up the first step, and as the first step is united to the second step (in case of there being more than one) by the chain represented in the said margin by the drawing marked Y, in drawing marked No. 1, it raises such second step also, and the complete shutting of the door of the carriage puts the whole into their proper and a convenient place, by means of the action of the before-mentioned studs or noses marked respectively A and B.

And I, the said Edward Thomason, do hereby further declare that

upon the same principle as the second step above described is added to the first step in section marked No. 7, a third step, or any other number, of steps, may also be added, and the said step or steps may be made of iron or steel, plain, plated, tinned, or japanned, or of cast-iron, or any other metal.

And, lastly, the drawing in the said margin of these presents marked No. 2 represents the aforesaid steps in their proper place within the carriage to which the same may be affixed.

In witness whereof I have hereunto set my hand and seal, the twenty-eighth day of November, in the thirty-seventh year of the reign of our Sovereign Lord King George the Third, by the grace of God, of Great Britain, France, and Ireland, defender of the faith, and so forth, in the year of our Lord one thousand seven hundred and ninety-six.

EDWARD [L. S.] THOMASON.

And be it remembered that on the same twenty-eighth day of November, in the year above mentioned, the aforesaid Edward Thomason came before our Lord the King in his chancery and acknowledged the specification aforesaid, and all and everything therein contained,
62, 63 in form above written. And also the specification aforesaid was stamped according to the tenor of the statute in that case made and provided.

Inrolled the twenty-ninth day of November, in the year above written.

THO. WEBB,
A Master Extraordinary in Chancery.

Defendants' Exhibit Thomason's Patent.

English letters patent granted Edward Thomason, dated on or about December 22, 1798, No. 2282. Carriage-steps.

To all to whom these presents shall come:

I, Edward Thomason, of Birmingham, in the county of Warwick, button-maker, send greeting:

Whereas, by letters patent under the great seal of Great Britain bearing date at Westminster, on or about the twenty-second day of December, in the thirty-ninth year of his majesty's reign (after reciting therein that I, the said Edward Thomason, had, by my petition, humbly represented unto his majesty that I had found out and discovered and was possessed of a new invention of "improvements in the making of steps for coaches, chaises, chariots, landaus, landalets, gigs, curricles, and all kinds of carriages to which steps are used," which would be of great public utility, and not publicly known to or used by any person or persons in this kingdom, and therefore prayed his majesty to grant to me his royal letters patent for the sole use and benefit of the said invention and discovery, in manner therein mentioned), his said majesty did give and grant unto me, the said Edward Thomason, my ex'ors, adm'ors, and assigns, his special licence, full power, sole privilege, and authority that I, the said Edward Thomason, my ex'ors, adm'ors, and assigns, and every of them, by myself and themselves, or by my or their deputy or deputies, servants or agents, or such others as I, the said Edward Thomason, my ex'ors, adm'ors,
65 or assigns, should at any time agree with, and no others, from time to time and at all times thereafter during the term of years therein expressed, should and lawfully might make, use, exercise, and

vend my said invention within that part of his majesty's Kingdom of Great Britain called England, the Dominion of Wales, and town of Berwick-upon-Tweed, in such manner as to me, the said Edward Thomason, my ex'ors, adm'ors, or assigns, or any of them, should in my or their discretion seem meet; in which said letters patent is contained a proviso whereby it was and is declared that if I, the said Edward Thomason, should not particularly describe and ascertain the nature of my said invention, and in what manner the same is to be performed, by an instrument in writing, under my hand and seal, and cause the same to be inrolled in his majesty's high court of chancery within one calendar month next and immediately after the date of the said recited letters patent, that then the said letters patent should be void, as in and by the said letters patent, relation being thereunto had, may more fully appear.

Now know ye that, in compliance with the said proviso, I, the said Edward Thomason, do hereby declare that the following is a particular description of the nature of my said invention, and of the manner in which the same is to be performed (that is to say):

First, instaed of raising the step or steps by the means described in the specification of my said former patent, according to the drawings therein particularly referred to, I raise them according to my new improvement as follows (that is to say):

(Here follows diagram marked page 64.)

In the drawing No. 3, contained in the margin of these presents, A represents a piece of iron or other metal or sufficiently solid substance, which is screwed near the bottom of the carriage door, holding a roller-wheel, B. C is a bended lever, made of hardened steel or any such hard substance, and which bended lever C is screwed or riveted firm on the shaft or arm E that passes through the hinge of the step, and by the pressure of said roller E on the bended lever C while the door of the carriage is shutting gives action to the said roller-wheel B and bended lever C, and thereby forces the said step or steps to their proper and convenient place in the carriage.

Secondly, in the specification of my said former patent I did
66 not describe any way whereof the said step or steps might be let down by the mere opening of the carriage door, the means of doing which I have since invented, and which improvement I now show in the drawing contained in the margin of these presents, marked also section No. 3 (that is to say):

D represents a chain fastened to the bended lever C, and hooked into a loop screwed into the door of the carrlage, which chain is made of a proper length, and consequently pulls down the step or steps by opening wide enough the carriage door.

Thirdly, in the specification of my said former patent I described in the drawing marked No. 1, referred to therein, that the lower step was connected to the upper step by a chain, but I now point out my new method of connecting the two steps together to be as follows (that is to say):

J J, in the drawing marked No. 1, in the margin of these presents, represents two jointed legs. Each of the said jointed legs move on a pivot near the middle, and also on a pivot at each end.

Fourthly, in the specification of my said former patent I did not describe any method of bolting the two straps together after they were folded up in the inside of the carriage, to prevent the said steps from making any rattling noise while the carriage is running. My new in-

vention to answer this purpose I declare to be as follows (that is *as* say):

In the drawings No. 1 and No. 2, in the margin of these presents, X represents a hook fastened to the inside part of the lower step and turning upon a pivot, so that when the said steps are completely folded together the said hook X falls over the bar of the first step and keeps it tight in its place.

Fifthly and lastly, in the specification of my said former patent I did not describe any method of fixing the step or steps to gigs, curricles, landaus, and two-wheel pleasureable carriages, being open or not, having a door or doors, and therefore I, the said Edward Thomason, do further declare that I now take up and let down the said step or steps of such last-mentioned carriages by my new improvement in the following manner:

In section No. 7, in the margin of these presents, A represents a bar of iron or any other metal fastened to the hinge of the aforesaid step or steps. B is a socket covering part of the said bar A, and screwed upon the shaft or any convenient part of the carriage. C is another bar, made of iron or any other sufficiently hard substance, which bar or lever C is fastened at the end of the said bar A by a nut or screw, at the end of which lever C there is a handle to raise the said steps up or let them down when wanted.

67

In witness whereof I, the said Edward Thomason, have hereunto set my hand and seal, this eighteenth day of January, in the year of our Lord one thousand seven hundred and ninety-nine.

EDWARD [L. S.] THOMASON.

Sealed and delivered, being first duly stamped, in the presence of—
JA. WESTON,
JAS. BOONE, cl'k to Messrs. Weston.

Defendants' Exhibit Carew's Patent.

UNITED STATES PATENT OFFICE.

Henry W. Carew, of Norwich, Connecticut. Letters patent No. 94472, dated September 7, 1869. Improved weather-strip.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Henry W. Carew, of Norwich, in the county of New London and State of Connecticut, have invented a new and useful improvement in weather-strips; and hereby declare the following to be a full, clear, and exact description of the same, reference being had to the accompanying drawing making part of this application, in which—

(Here follows diagram marked page 69.)

Figure 1 is a vertical section.

Figure 2 is a horizontal section.

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Figures 3 and 4 are detached views of the elevator.

My invention relates to the class of weather-strips where the plate is raised into the position designed to exclude rain, snow, dust, &c., and consists in the peculiar means employed for raising the edge of the plate into the required position.

In the drawing—

a represents the closed door.

b is the threshold.

c is the metallic plate, and is hinged at its front edge to the threshold by means of the staples *f*.

d is the elevator, and consists of a plate screwed to the outside of the door, and having attached to it an inclined arm, projecting forward and downward, below the bottom of the door, its point coming into the groove *g*. This groove is cut, to the width and depth required, into the threshold, to allow the lower point of the elevator-arm *d'* to swing clear and a little below the bottom of the floor.

e is the moulding-piece, attached to the front of the door in the usual manner, and having a recess, *e'*, cut in, as shown in figure 1.

The operation of my invention is as follows:

When the door is open the plate *e* lies on the threshold *b*. In closing the door the point of the arm *d'* swings around the arc in the groove *g*, coming under the back edge of the plate *e*, causing it to slide up the inclined top of said arm in the recess *e'*, as shown in Fig. 1.

In opening the door the arm *d'* recedes from under the plate *c*, allowing it to fall back upon the threshold *b*, the whole forming a more convenient and positive means of operating the plate for the purpose described than the modes heretofore in use.

I am aware that a finger has been used for raising and holding the foot-plate, either up against the lower surface of a fixed plate or against the inside of a vertical plate, the foot-plate being sustained in position by the finger, which is liable to get bent, or otherwise injured, by any strain brought against the foot-plate while the door is closed.

By my arrangement it will be seen that the elevator *d* raises the edge of the plate *c* to the proper height to enter the recess *e'*, so
70, 71 that in the last movement of the closing door the edge of the plate *c* is carried back into the recess *e'*, where it is held independent of the elevator *d*.

I, therefore, do not claim broadly the use of the elevator *d*.

What I claim is my invention and desire to secure by letters patent, is—

The elevator *d* and the groove *g*, in combination with the plate *c*, the moulding *e*, with its recess *e'*, and the door *a*, all constructed, arranged, and operated substantially as and for the purpose specified.

HENRY W. CAREW.

Witnesses:

J. B. FULLER,

A. S. ELKINS.

Defendants' Exhibit Paris' Patent.

UNITED STATES PATENT OFFICE.

Daniel E. Paris, of Troy, New York. Improvement in cooking-stoves. Specification forming part of letters patent No. 113556, dated April 11th, 1871.

To all whom it may concern:

Be it known that I, Daniel E. Paris, of the city of Troy, in the county of Rensselaer and State of New York, have invented new and useful improvements in cooking-stoves; and I do hereby declare that

the following is a clear and accurate description of the same, reference being had to the accompanying drawing, and to the letters of reference marked thereon, like letters representing like parts, in which—

Figure 1 is a perspective outside view of my stove, showing the double reservoir I I and the hot-closet below, and also the mica
72 windows O O, &c. Fig. 2 gives the same general view of the stove, with the oven-door open, the mica windows removed, the reservoir covers U U turned up, and one of the front ash-box doors open and the other removed from the stove. Fig. 3 is a front view, with the ash-box doors Z Z thrown open, showing the coal-pan A and the ash-pan B and their positions one above the other. Fig. 4 is a view in perspective of the front fire-place W. (Seen again at W, in Fig. 7.)

This plate is shown attached to the movable hearth-slide *p'* (seen again at *p* in Fig. 1), but it is not necessary to attach it to said plate. Its use is simply to form a front wall to the fire-box, in order to protect the mica from contact with the fuel in the fire-box. The upper part of the plate is made with open bars, so as to allow the light to reflect through the mica windows O O. The lower part of this plate is made close, but it may be made open, if desired, provided a bar or its equivalent is formed across the plate, which shall connect with the hearth or hearth-slide, so as to prevent the air that reaches the fire as draft from passing up over the fire in front of said plate, which, if allowed, would injure the draft; and for this reason the hearth-plate *p* should come up to the plate W and make close connection with it; or, what is equivalent, the hearth-plate *p* may come up near to the plate W, and then the opening left may be closed in some other way, such as, for instance, attaching a foot-piece or cap to the mica door, as seen in Fig. 5 at Q. Q.

These pieces Q Q may be one or more, and attached to the mica door or windows O O, so that when the mica door is in its place, as in Fig. 1, the openings *q' q'* (seen in Fig. 6) will be covered, and thus in effect be the same as though the plate P actually made a close connection with the front fire-plate W.

The object of making this covered opening is, that as coals and ashes accumulate on the hearth P, having passed through the bars or over the plate W, they may be easily disposed of by sweeping or brushing them through the openings *q' q'*, falling into the sifting-pan below.

It will be seen that I locate the hearth above the fire-grate, and about two-thirds of the way down the fire-box from the stove-top to the grate. This location of the hearth is important, as it gives
74 room enough above for perfect illumination, &c., and also room enough below for the large coal-pan A and the large ash-pan B.

Fig. 7 is a sectional side view of the front part of the stove, showing the fire-box C, the coal-pan A, the ash-pan B, the front doors to the ash-chamber and their draft-openings, and also the hearth-plate P and the mica door or doors, which may be stationary or movable, or hung on hinges, so as to open and shut as desired.

It will be seen by the perspective views, Figs. 1 and 5, that this mica door or mica windows consist of or are upright illuminating lights formed on a sloping surface, which surface connects the stove-top with the hearth P. In fact, the hearth P, as well as said sloping part, is merely a continuation of the top plate itself, which, when it reaches the front of the fire-box, is depressed downward to the front at such an obtuse angle as may be desired, and then forward horizontally, forming the hearth-plate P, which latter may be all in one piece or in two or more pieces, as desired. This sloping surface, together with the upright mica windows, not only gives beauty and gracefulness to the

stove-front, but it is useful in gaining the space at q' q' in front of the plate W, and in rear of the mica windows; also, in giving room to the place W to lean forward so as to graduate the capacity of the fire-box; and it is essential that the stove-top project as little forward as possible in front of the plate W, because if it projected far forward it would interfere with the feeding the fire with coal over the plate W when the boiler-holes are occupied on top. It would also be more inconvenient to broil over the fire, which is done by a gridiron itserted through the opening formed above the plate W. Thus it is seen that the stove-top should project as little as possible in front of the plate W, and it is also seen that it is very desirable to have plenty of space in rear of the mica door at its base. Thus I call particular attention to the importance of this sloping surface connecting the hearth with the top, and also to the upright windows on this surface, so made that the mica will not blacken because of their greater distance from the fire.

The fire-grate W', Fig. 8, lies loosely on the upright rocker-pieces x x, which rest on journals at a point some distance below, at x' x',
74 and these rocker-pieces are vibrated by the shaker T, inserted into the side of one of them, as seen in Fig. 8, or the grate may be vibrated in the usual way; but this is preferred. The coal-pan A rests upon these same rocker-pieces at a point below the grate, and is made to draw out and push in like a drawer, resting on projecting flanges cast on said rocker-pieces.

Thus it will be seen that the fire-grate and coal-pan are both moved or vibrated by the shaker T, so that I sift or screen the coals from the ashes at the same time that I shake the grate. The chamber in which these two pans are located forms also a large heating-chamber or hot-air draft, which gives more perfect combustion and is a saving of fuel.

The coal-pan A is made with openings at the bottom to let the ashes through into the ash-pan B, and these openings are not so large as to let the coal through.

The pans A and B are independent of each other, and the fire-grate independent of both, and the grate is made to turn on its journals, so as to dump and clear itself of the coals; and it will be seen that the journals of the rocker-pieces x x are so far from the intense heat of the fire-box that they are not affected by it. These rocker-pieces form also conductors or chutes for the ashes to the ash-pan at each end of the same.

The roasting-rack S, Fig. 2, is made so that it will let down horizontally or turn up perpendicularly, and so that when turned up the oven-door may shut over it, and when let down horizontally pans containing articles baking or roasting, especially the dripping-pan, may be drawn out onto it, so that the intense heat of the oven may be avoided, and so that such work as basting meat for instance may be done outside of the oven.

The rack is suported by the combination of the side or jamb of the stove with the oven-bottom, which unite at their point of contact to form sockets or slots for one, two, or more projecting arms of said rack. This rack is movable, so that when not in use it can be laid away; and the oven-door may be made to shut over the open sockets or slots formed for its reception. This rack may be attached simply to the sides of the stove or to the oven-bottom only, if desired.

The oven is ventilated and the fire-box supplied with heated air by means of the openings d' on either side of the stove, Figs. 1

(Here follow 2 diagrams marked pages 75, 76, 77, & 78.)

79 and 2, which admit cool air into the passage *d'*, Fig. 7, which latter is connected with the passage N, Fig. 7, the passage N being an opening through the long center or top plate and its lining and support, and the two passages are connected with the oven by small openings down into the oven, and also into the fire-box, as seen by the arrows at *d* and N in Fig. 7.

The pancake-griddle R, Fig. 9, has a journal cast on the upper side at *n'*, which fits into the opening *n*, Fig. 1, and this said griddle may be thrown over any boiler-hole of the stove. As the opening N is equidistant from all four boiler-holes, by this means a cake-griddle may be thrown over any of the the boiler-holes, and thus its heat is graduated to any degree desired without lifting it off the stove.

I fasten the doors of the stove, especially the oven-doors, with an improved catch or handle. (Seen in Figs. 1 and 12.) Its novelty consists in the crooked shank 2, combined with the wood attachment 3, the parts 4, 5, and 6 not being new. The object of this crooked shank 2 is to bring the wood handle 3, Fig. 1, down near the surface of the door, so as not to be in the way, and so as to give a greater purchase in tightening the catch.

I have added a second sheet to the *the* drawing, giving more in detail some of the parts, especially the arrangement of flues as regards the reservoirs and the formation of the reservoir seat or chamber.

Fig. 1, sheet 2, is a vertical section taken through E F of Fig. 3. Fig. 2 is a vertical section taken through C D of Fig. 1. Fig. 3 isa horizontal section taken through A B of Fig. 1. Fig. 4 shows the bottom of the reservoirs and the eccentric position of the flanges or sinks formed on the bottom. Fig. 5 shows the flue-seat and heating-chamber formed on the back of the stove, with the openings *j j* into the same, which are made to correspond with the flanged bottom of the reservoirs or kettles I I. Fig. 6 is the same view as Fig. 5, with the rear plate P removed, showing the movement of heat under the kettles or reservoirs, through the side flues *f f*, into the chamber *h h*, and thence into the central flue *g*, on its way to the smoke or exit opening at M. Figs. 7, 8, and 9 are different views of the damper K, which damper controls the movement of heat or smoke through the chamber *h h*, as follows:

80 When the damper K, which operates only in the central flue G, as seen in Fig. 6, is turned backward, as in Fig. 1, the heat or products of combustion pass around the oven in the usual way—that is, down the two side flues *f f*, and thence to the front of the oven, and thence up the central flue G to the exit opening M; but when this damper is thrown over to the front, as in Fig. 9, the central flue G is closed, thus compelling the heat to enter the chamber *h h*, and thence pass out above the damper K to exit opening M. In the first instance the heat operates directly upon the oven and indirectly upon the reservoirs, while in the second case it operates directly and powerfully upon the reservoirs, causing them to heat quickly.

These flues may be two instead of three, if desired; but in either case the principle is the same.

The movement of the heat or the products of combustion into the chamber H on its way to the exit pipe is shown by the arrows in Fig. 3.

It may be observed that no particular position on the stove-back is necessary for the flue-chamber, or therefor for the reservoirs. Nor is it essential that they be in two parts. Thus the chamber H may be near the bottom or near the top of the stove, or part way between, as de-

sired; and the rear plate P may intervene between the chamber H and the bottom of the reservoirs; or it may, and often best, be entirely omitted, as in my application for patent filed January 20, 1869.

The difference between this and the construction there shown consists, first, in the damper K, which here revolves, and, second, in the reservoirs, which are made here movable; and they may be made in one part instead of in two, as was there shown, and the rear plate P removed; and the outer walls of the chamber *h* may be extended upwards, so as to form a connection with the reservoir on its bottom, or part way up its sides, as desired, and the reservoir still be made movable so as to be taken off and cleaned, or used for other purposes.

It will be observed that the front side of the reservoir comes in parallel contact with the upper part of rear casing of the back flues, so as to receive their radiating heat.

81 The openings *j j* are shown round; but they may be square or oval or any other desired shape.

Having thus described my invention, I claim—

1. The upright open-barrel plate W, in combination with the upright mica door or window O O, or any equivalent therefor, constructed substantially as herein described and set forth.

2. The rocker-pieces *x x*, or any equivalent therefor, when made to support a coal-grate or coal-pan, one or both, for the purpose or substantially in the manner herein shown and described.

3. The coal-pan A and the ash-pan B, the former above the latter, and each independent of the other, in combination with the fire-grate above and the door-openings in front of the same, when made for the purpose or substantially in the manner herein described and set forth.

4. The opening or openings Q′ Q′, formed between the hearth-plate P and the front fire-plate W, in combination with the pieces Q Q, formed on the mica door O O, or any equivalent for the same, when made for the purpose or substantially in the manner herein described and specified.

5. The movable rack S, or its equivalent, made for the purpose, and attached to the stove, substantially in the manner herein shown and described.

6. The mode of ventilating the oven and fire-box by means of the air-passages *d* and N, when connected and combined with each other substantially in the manner herein set forth and described.

7. The construction of a stove-door knob or catch, made with the crooked shank 2, in combination with the wood attachment 3, when made for the purpose and substantially in the manner herein shown and described.

8. The revolving cake-griddle R, in combination with the central opening N in the stove-top, or its equivalent.

9. The revolving flue-damper K, in combination with the flues *f f* and *g*, and the heating-chamber below the reservoir, made to operate substantially as herein described and shown.

DANL. E. PARIS.

Witnesses:
MERIT E. PARIS,
WM. D. HERON.

UNITED STATES PATENT OFFICE.

Jacob V. Vrooman, of Schenectady, New York. Improvement in stove-covers for fuel-reservoirs. Specification forming part of letters patent No. 119434, dated September 26, 1871.

To all whom it may concern:

Be it known that I, Jacob V. Vrooman, of Schenectady, in the county of Schenectady and State of New York, have invented certain improvements in stove-covers for fuel-reservoirs, of which the following is a specification:

The principal part of my invention relates to the construction and arrangement of a hinged reservoir-cover, with reference to an outer or rotating top of a stove in such a manner as that by opening or closing the one we will open or close the other.

In the accompanying drawing Figure 1 is a perspective view of a portion of the upper part of a stove embodying my invention. Fig. 2 is a central ventrical section of the same on a plane running through the center of the hinge C of the lower or inner cover A. Fig. 3 is a vertical section showing the outer cover B, partially rotated, so as to uncover the lower cover A. Fig. 4 is a vertical section showing the inner cover A, as opened by rotating the outer cover or top B a little more than shown in Fig. 3. Fig. 5 is a top view of Fig. 1. Fig. 6 is a view of cover A, and its hinge C, as seen in plan and section.

A is a cover of the fuel-reservoir D of a stove. Said cover A is hinged fast to the bottom of a recess, *f*, in the top of the stove, as shown in the accompanying drawing. B is the outer cover or swing-top of the
84, 85 stove, upon which an urn is usually placed. Top or cover B has

(Here follows diagram marked page 83.)

a horizontal motion around a bolt or rivet, *d*, in the usual manner. C is a hinge made of one piece of metal, having one end, *e*, forked, and slightly curved downward, so as to fit easily into two corresponding openings, *b b*, cast near the edge of a flat or straight side of cover A, as shown in Fig. 6. Hinge C may be fastened within recess *f*, at the top of the stove, by means of a bolt or rivet, *d*, as shown in Figs. 1 to 6 of the accompanying drawing. Upon the top of reservoir-cover A, and between its two hinge-openings *b b*, is a cast nib or spur, *a*, projecting upward and about three-eighths or half an inch above the level of the bottom of the outer cover B, or sufficiently high for cover B to press against it when rotated outward or off the stove so as to raise cover A to the position shown in Figs. 1, 4, and 5. D is the reservoir of the stove. E is the outer casing of the upper section of the stove. In Fig. 2 we see the position of the two covers A and B when both are in their usual positions. In Figs. 1 and 4 we see the fuel-reservoir cover A opened so as to permit a fresh supply of fuel to be put into the reservoir D. It will be seen that hinge C and openings *b b* in cover A may be easily cast, and will require but little fitting, thus making a cheap and good mode of securing cover A to its place.

It will be seen from the above description that the operation of my invention will be as follows: To open cover A we rotate or push cover B outward, as shown in Fig. 5, which causes the spur *a* to be gradually depressed by coming into contact with the under side of cover B, thus

raising cover A in a manner similar to the raising of the long arm of a bent lever by pressure upon its shorter arm, as may be clearly seen upon reference to Fig 4. By the use of my invention it will not be possible for any soot to get off the inner cover and fall upon the carpet or into the room, which is very desirable in all parlor stoves. It will also be seen that a lifter will not be needed to remove the reservoir-cover.

I do not claim, broadly, the use of a hinged cover for fuel-reservoirs in stoves; but

What I claim as my invention is—

1. Hinge C, constructed and arranged with reference to cover A in the manner herein set forth.

2. The hinged cover A, having a spur or nib, *a*, combined and
86, 87 arranged with reference to cover B so as to operate in the manner and for the purpose herein shown.

JACOB V. VROORMAN.

Witnesses:
JONAS H. CLUTE,
THOS. HOUGHTON.

Defendants' Exhibit Little and Nation's patent.

UNITED STATES PATENT OFFICE.

Ezekiel C. Little and David H. Nation, of St. Louis, Mo., assignors to the Excelsior Manufacturing Company of same place. Improvement in stove-oven shelves. Specification forming part of letters patent No. 205754, dated July 9, 1878; application filed May 13, 1878.

To all whom it may concern:

Be it known that we, Ezekiel C. Little and David H. Nation, residents of St. Louis, Mo., have made a new and useful improvement in stove-oven shelves, of which the following is a full, clear, and exact description, reference being had to the annexed drawing making part of this specefication, in which—

Figure 1 is a horizontal section taken through a stove embodying the improvement, showing the shelf let down, and showing only the parts immediately connected with the improvement; Fig. 2, a similar section, the parts being as when the oven-door is closed and the shelf turned up; Fig. 3, a view, in perspective, from beneath, of that portion of the shelf shown in Figs. 1 and 2; Fig. 4, an elevation, looking in the direction of the arrow *x* of Fig. 1, of that portion of the oven-door shown in
91 Figs. 1 and 2, and showing also that part of the stove to which

(Here follows 2 diagrams marked pages 88, 89, & 90.)

the door is hinged; and Fig. 5, an end elevation of that portion of the oven-door shown in Figs. 1, 2, and 4, looking in the direction of the arrow *y* of Fig. 1; Fig. 6, a view, in perspective, of the improvement and of the parts immediately therewith connected; and Fig. 7, a detail, being a view, in perspective, from the inner side thereof (and looking from the position of the door-hinge) of a portion of the oven-shelf and of the oven-door, the parts being as in Fig. 6.

The same letters of reference denote the same parts.

The present is an improvement in that class of oven-shelves that are

operated by the movement of the oven-door, and, that when the oven-door is shut, are enclosed within the oven, but when the oven-door is opened are let down outward therefrom, forming a hearth just without the oven and preferably even with the oven-bottom.

In the present improvement the shelf is operated by a projection on the oven-door coming directly into engagement with a projection upon the shelf; and the improvement has especial relation to the peculiar shape, arrangement, and operation of these projections.

Referring to the drawing, A represents the stove-oven, B the oven-door, and C the oven-shelf. The latter is supported by arms, *c*, that are journaled in suitable bearings, *c'*, and by means of which the shelf can be turned up within the oven or let down on the outside thereof. The shelf, at the end toward the door and near the inner edge of the shelf, is provided with a projection, D, that stands up from the shelf, and inclining slightly toward the door, as indicated more distinctly in Fig. 2. At its upper end the projection has an extension, *d*, that projects horizontally toward the inner end of the door. The projection is further, and on the side toward the door, provided with a rib, d^1, that extends from the extension *d* downward, curving around as shown in Figs. 2 and 3.

The door B is furnished with a projection, E, that projects from the inner face of the door far enough and so as to come past, opposite, and against the outer side of the extension *d* when the door is in the position of Fig. 1. The projection E, at its outer end and on the side toward the extension *d*, is beveled, as shown at *e*, Figs. 1, 2, 4, and 5. This
92 bevel is preferably hollowed out slightly, as shown more distinctly at *e'*, Fig. 1. The nose of the projection E is also rounded in a vertical direction, as shown at e^2, Figs. 4 and 5; and the projection is also preferably extended at e^3, Figs. 1, 2, and 4, in the direction of the outer end of the oven-door.

To lift the shelf, the door is moved into the position of Fig. 1. The bevel *e* of the projection E comes against the outer side of the extension *d*, causing the shelf to be lifted slightly. As the door continues to close, the nose of the projection passes down against the rib d^1, causing the shelf to be lifted higher and higher, until finally the parts are brought into the position shown in Fig. 2—that is, the nose of the projection E, as the two parts D and E move upon each other, first rides diagonally downward and across the rib d^1 until it is close to the main part of the projection at d^2, and then rides diagonally downward and back toward the outer lower end of the rib d^1; and when the door is shut, the extension e^3 is brought against the lower end of the rib d^1, as in Fig. 2, and serving to hold up the shell sufficiently to keep the latter from coming in contact with the inner face of the door. The letting down of the shelf is effected by a movement the reverse of that above described.

The shelf being balanced to fall outward when its support is withdrawn, as the door swings open the projection moves up on the rib d^1, letting the shelf gradually down.

The chief advantage obtained from the present improvement is that the movement of the door in closing is gradually imparted to the shelf. However suddenly the door is swung to, the shelf is never struck violently, but its lifting is initiated easily and gently, and the entire movement effected quietly. This is owing mainly to the projection E of the door encountering first the extension *d* of the part D, and then to its winding down and around the rib *d'*, in the manner described.

We are aware that stove-oven shelves have been lifted by means of the oven-door, and that projections have been used upon the door and also upon the shelf, and also that the projection on the door has been

furnished with a roller. The latter is valuable in reducing the friction, but it is liable to be broken in suddenly closing the door, and it
93, 94 incre'ses the cost of the construction. By means of the peculiar shape of the parts E and D we are enabled to dispense with a roller, and yet be able to operate the shelf as easily as when a roller is used.

We claim—

1. The combination of the door B and the shelf C, the former having the projection E, having the bevel *e*, and the latter having the projection D, provided with the extension *d* and rib d^1, substantially as described.

2. The door B, having the projection E, provided with the extension e^3, and having the bevel *e*, in combination with the shelf C, having the projection D, provided with the extension *d* and the rib d^1, as and for the purpose described.

EZEKIEL C. LITTLE.
DAVID H. NATION.

Witnesses:
CHAS. D. MOODY,
SAML. S. BOYD.

(Here follows diagram marked page 95.)

96, 97 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for said district, hereby certify that the above and foregoing is a full and complete transcript of the record and proceedings had in the above entitled case as fully as the same appear in my office.

In witness whereof I have hereto subscribed my name and affixed the seal of said court, at office, in the city of St. Louis, this 21st day of June, A. D. 1879.

[SEAL.]

M. M. PRICE, *Clerk*,
By A. P. SELBY, *Deputy*.

(Indorsement on cover:) No. 224. Bridge, Beach & Company, appellant, vs. Excelsior Manufacturing Co., G. F. Filley, president, et al. E. Missouri C. C. U. S. Filed 9th August, 1879.

REC. 224—4

FILED
JAN 13 1882
JAMES H. MCKENNEY

Robert Clarke & Co., Printers, Cincinnati, O.] *[January, 1882.*

Supreme Court of the United States.

OCTOBER TERM, 1881.

Bridge, Beach & Co., *Appellant*,

No. 224.] *vs.*

Excelsior Manufacturing Co. et al., *Appellees.*

IN EQUITY.

BRIEF FOR APPELLANTS.

ROB'T H. PARKINSON,
For Appellants.

Robert Clarke & Co., Printers, Cincinnati, O.] [*January, 1882.*

Supreme Court of the United States.

OCTOBER TERM, 1881.

Bridge, Beach & Co., *Appellant*.

No. 224.] *vs.*

Excelsior Manufacturing Co. et al., *Appellees.*

IN EQUITY.

BRIEF FOR APPELLANTS.

STATEMENT OF CASE.

This is an appeal from the Circuit Court of the United States for the Eastern District of Missouri. The suit is for infringement of letters patent No. 180,001, for improvement in cooking-stoves, granted Esek Bussey, as inventor, and Charles A. McLeod, as assignee of one-half interest, July 18, 1876. Complainant is grantee of the entire interest in St. Louis and all other territory between the Mississippi River and the Rocky Mountains. Its title is admitted by defendants. (See Record, p. 16.)

The case was heard below on bill, answer, replication, and proofs, and a decree entered, finding that there was no infringement, and dismissing the bill.

From this decree the complainant appealed.

The validity of the patent and infringement are in issue.

ASSIGNMENT OF ERROR.

The Court erred—

First. In finding that defendants had not infringed upon the rights of complainants under their letters patent.

Second. In dismissing the bill.

Third. In that it did not find the patent sued upon in all respects good and valid, that complainants were duly vested with title thereunder for the territory set forth, and that the defendants had infringed the same within said territory; and grant the injunction, account, and other relief prayed for in the bill.

THE INVENTION.

The invention consists in combining with the oven of a cooking-stove an automatically adjustable extension shelf, in such a manner that it will, by the act of opening the oven, be adjusted to the same plane as the bottom of the oven and afford an external support, upon which the vessels in which food is being baked can be readily drawn without lifting them, and will, by the act of closing the oven, be restored to a perpendicular position, where it may remain without encroaching upon the space available for cooking purposes.

The shelf is provided with hinges so constructed as to admit of its falling outside the oven in a plane with its bottom surface, to support it with its load when in such position, and to allow it to rise to a perpendicular position when the oven is closed.

The oven door is provided at its rear edge, near the bottom, with a cam, which slides under the end of the shelf as the door begins to close, and lifts it out of the way before the door comes directly in contact with it, the edge of the shelf being rounded off so as to leave the front of the door a sufficient arc in which to swing while the cam is lifting the shelf out of the way. The same cam controls the downward movement of the shelf when the door opens and prevents its falling abruptly.

This automatic adjustment of the shelf to its several

positions is rendered especially important by the fact that the shelf, if kept within the stove, is usually too much heated to be adjusted by hand, without serious inconvenience, as well as loss of time.

The claim is as follows:

"In combination with a stove oven, a hinged shelf fitted to fall outward and downward automatically when the oven door is opened, and to be raised up by closing the oven door adapted to operate upon it for that purpose, substantially in the manner and for the purposes herein set forth."

INFRINGEMENT.

Defendants' stove is in evidence as "Complainant's Exhibit Defendants' Stove." The manufacture and sale of this stove by defendants, in St. Louis, Mo., subsequent to the assignment of that territory under the patent here in suit to complainants, and prior to the commencement of this suit, is admitted. (See Record, p. 13.)

This stove has an oven door provided with a cam or projection, and a hinged extension shelf which, when the oven door is opened, adjusts itself to the plane of the oven bottom, and which, upon closing the oven door, adjusts itself by automatic action to a position perpendicular to the plane of the oven bottom, the whole constructed, arranged, and operated in the same way as is shown in complainants' patent.

Every element of the patented combination is found in defendants' stove in the same relative position and serving the same purpose. The only difference, even formal, is that the cam projection from the rear edge of the door, which operates to raise the shelf, is placed slightly higher than that of the patent, and the edge of the shelf extended upward in a kind of lip to meet it. In each case the cam operates upon the under side of the shelf in the same way and for the same purpose. The only testimony upon this question is that of complainant's expert, no counter-evidence being offered. He says: "The only difference which I find between the two is, that in the patent the projection on the door for raising the shelf operates on the edge and

bottom of the shelf, while in defendants' stove the projection on the door operates on the edge and bottom of a raised portion of the shelf, and I am of the opinion that this difference is an immaterial one, and does not affect the operation of the device; its only effect being to slightly decrease the area of the shelf."

The patentee is entitled to protection:

First. Against the use of the same combination in the same form.

Second. Against the use of a combination constructed, arranged, and operated in substantially the same manner, but in which mechanical equivalents are substituted for one or more elements of the patented combination.

Third. Against the use of a combination arranged and operated in substantially the same manner and consisting of the same elements, though differing in form and adjustment.

Fourth. Against the use of his invention as part of another combination, even though such combination be an improvement upon his invention and patented as such.

Ames v. *Howard*, 1 Sum. 482.
Hamilton v. *Ives*, 6 Fish. 244.
Ives v. *Hamilton*, 2 Otto, 421.
Ingels v. *Mast*, 6 Fish. 415.
Ryan v. *Goodwin*, 3 Sum. 514.
Seymour v. *Osborne*, 11 Wall. 516, 556.
Foster v. *Moore*, 1 Curtis Rep. 279.
Imlay v. *Nor. & Wor. R. R.*, 1 Fish. 340.
Gould v. *Rees*, 15 Wall. 187, 194.
Winans v. *Denmead*, 15 How. 330, 342, 343.

SUFFICIENCY OF DESCRIPTION.

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These patents show a series of carriage steps, arranged in a hanging frame, so as to be lowered by the hand of a person inside, or by a chain connected with other mechanism for the purpose, and drawn up and folded within the carriage when the door is closed. Instead of a simple cam or projection upon an oven door for raising an oven shelf, Thomason, in his first patent, describes a toothed lever and cog wheel acting in combination with a double crank, a spring, and a chain, for the purpose of raising and folding the steps of a carriage by closing the door. In operation, the steps are raised by the spring. No means of lowering the steps is given. In his second patent, he substitutes a bended lever and a roller wheel for the toothed lever and cog wheel of the first patent, and attaches a chain to the door of the carriage, by means of which the

steps may be dragged from their place and fall into position for use.

There is no stove, no oven, no continuous extension shelf, or means of forming one, shown or suggested. There is nothing performing the same office or a similar office. There is nothing to suggest the advantage of such a device, or the mode of constructing and operating it adopted by the patentee. Neither of the elements of complainant's invention is present. These elements are not represented by equivalents either in function or structure.

These patents show nothing capable of answering the purpose of complainant's invention, or which could be made to do so without changes which would entirely alter the character, not merely of the organization as a whole, but of each individual element.

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There is no extension shelf or supporting surface of any kind, and nothing that performs, or is capable of performing, any kindred function, The weather strip does not act as a shelf or support for any thing whatever, but, on the contrary, is itself supported by the threshold upon which it lies. If applied to an oven, it would not extend beyond the surface of the oven, but rest upon it. It would not be flush with that surface—an important feature in the extension shelf of a oven—but would remain above it. The weather strip performs its functions only

when the door is closed and it is in its inclined position, while the oven shelf is useful only when the door is open and it is projected horizontally. The action of the door upon the strip is substantially different from that of the oven door upon the shelf in complainant's patent. The door in the Carew patent operates by its finger directly upon the front edge of the weather strip. If the oven shelf were made rectangular, like the weather strip, the door would jam against it, and not close at all. The extension of the shelf beyond the edge of the oven necessitates such a method of operating it as will enable it to be acted upon at the end instead of the front edge. This is done by rounding off the edge of the shelf and placing the cam at the rear edge of the door, so that it operates upon this edge before the projecting shelf has interrupted the swing of the door.

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PARIS PATENT.

Paris describes a roasting rack, which may be used as an oven shelf, and which is so made "that, when turned up, the oven door may shut over it." It is not lowered by opening, or raised by closing, the oven door. The door has no cam or projection, and there is no automatic action

whatever. The Paris invention is precisely what is disclaimed in complainant's patent, and has just the disadvantages which complainant's invention is designed to overcome, viz., the necessity of raising and lowering a heated shelf by hand.

BURKE'S DAMPER.

This exhibit shows neither complainant's combination nor any combination that could be substituted for it. It is simply a damper for regulating draft. It performs no office even remotely analogous to that of complainant's extension shelf, and is neither so supported nor in such relation to other parts as to be capable of such an office. It has, as its different purpose and different association require, an essentially different mode of operation. (See dep. *Bates*, p. 15; ans. 5.)

It is ~~totally~~ fatally deficient on another ground. It does not antedate complainant's invention.

There is no evidence tending to show any sale or use of Burke's damper prior to April 15, 1876, about a month before the application for complainant's patent was filed, and about five months after complainant's invention is shown to have been complete.

The patentee testifies to having given directions to his pattern maker about making the wooden pattern for his invention in November, 1875; that these wooden patterns were completed before Christmas, and "were identical with that shown and described in the patent." (See dep. *Bussey*, p. 11; ans. 4.)

He is corroborated in this by his pattern maker. (See *admission*, p. 12.) No effort is made to dispute these dates.

A patentee who has used reasonable diligence in applying for a patent, is entitled to carry back his invention to the time when he first gave it definite expression.

See *Reed* v. *Cutter*, 1 St. 590.

Reeves v. *Keystone Bridge Co.*, 6 Fish. 456.

"The evidence must establish clearly the priority of a completed and useful machine over the complainant's, or it

is unavailing—to doubt upon this point is to resolve it in the negative."

Parham v. *American Buttonhole, Overseaming and Sewing Machine Co.*, 4 Fish. 468, 482.

"The invention or discovery relied upon as a defense, must have been complete and capable of producing the result sought to be accomplished: and this must be shown by the defendant. The burden of proof rests upon him, and every reasonable doubt should be resolved against him."

Coffin v. *Ogden*, 18 Wall. 120.

Washburn & Moore Mfg. Co. v. *Haish*, 19 O. G. 173.

PATENTABILITY OVER PRIOR DEVICES.

It is sufficient that none of the alleged anticipations can be substituted for complainant's invention, and do its work. That which can not be substituted, without material modification, for a patented device, and do the same work, can not affect the validity of the patent. None of the alleged anticipations produce the same or analagous results.

"Particular changes may be made in the construction and operation of an old machine so as to adapt it to a new and valuable use not known before, and to which the old machine had not been, and could not be applied without those changes, and, under those circumstances, if the machine, as changed and modified, produces a new and useful result, it may be patented, and the patent will be upheld under existing laws.

Such a change in an old machine may consist merely in a new and useful combination of the several parts of which the old machine is composed, or it may consist of a material alteration or modification of one or more of the several devices which entered into its construction; and, whether it be the one or the other, if the change of construction and operation actually adapts the machine to a new and valuable use not known before, and it actually produces a new and useful result, then a patent may be granted for the same, and it will be upheld as a patentable improvement."

Seymour v. *Osborne*, 11 Wall. 516, 548.

In the *Cawood cases*, 4 *Otto* 695, the alleged anticipations were all machines designed for analagous work, and in structure very closely resembled the patented device. The Supreme Court in holding them insufficient to invalidate it laid great stress upon the fact that none of them would without modification do its work.

In *Barnes* v. *Straus*, 5 *Fish* 531, the patent was for a corset-spring, consisting of two or more metallic plates placed one upon another and fastened together at their center, so connected that they could move upon each other in the direction of their length. In sustaining the patent and distinguishing the device from carriage springs composed of plates similarly connected, the Court per Judge Blatchford says:

"The carriage spring differed from the corset spring in not having that flexibility at the center of its length which the corset spring has and must have, and in not curving in one direction at one end and in the other direction at the other end, as the corset spring is shown in the drawing of this patent to do. In other words the carriage spring was not a corset spring, and could not be used as such without such a change as involved invention."

In *Parker* v. *Styles*, 5 *McL.* 44, Justice McLean says: (p. ~~63~~ 62.)

"Proof of the previous use of a structure bearing some resemblance in some respects to the improvement of the plaintiff, and which might have been suggestive of ideas, or have led to experiments resulting in the discovery and and completion of his improvement, will not invalidate his claim under his patent. ~~[See p. 63.]~~

This Court has repeatedly held that a patent for a single device, or for a combination of old elements, cannot be invalidated for want of novelty, except by showing the entire invention in some single prior device, capable of answering every purpose of the patented device without change. See *Bates* v. *Coe*, 8 *Otto*, 31; *Imhaeuser* v. *Buerk*, 11 *Otto* 647; *Parks* v. *Booth*, 12 *Otto* 96.

The question of novelty and patentability is not dependent upon the introduction of new mechanical principles.

The most meritorious inventions of the age, almost without exception, consist in the combination or modification of well known mechanical agencies by which the organization into which they are introduced, is endowed with some new property or advantage.

The novelty of the improvement is determined with reference to the organization as a whole, not with reference to any or all of its elementary parts separately considered.

If the organization as a whole is new and operative for some useful purpose, it is immaterial how simple the instrumentalities may be, or how slight the modification to adapt them to their new relations. See *Seymour* v. *Osborne*, 11 *Wal.* 516, 548.

Inventions which work important revolutions in the art to which they relate, and remedy long standing and serious difficulties, have often been effected by such slight mechanical changes that a child could make them when once suggested.

In *Ryan* v. *Goodwin*, 3 *Sum.* 514, Justice Story says in speaking of patent for improvement in matches—says: "The combination is apparently very simple, but the simplicity of an invention so far from being an objection to it, may constitute its great excellence and value."

In *Pitts* v. *Whitman*, 2 St. 609, Justice Story says: (p. 619.)

"If the combination was new, it is a patentable matter, although a part of the apparatus might have been applied to similar purposes in other and different machines. Under such circumstances it would not be a mere application of an old apparatus to a new purpose, but a new combination of machinery, incorporating, in part, an old apparatus for a new purpose."

In *Many* v. *Sizer*, 1 *Fish.* 17, the court per Sprague, J., says:

"But if the patentee borrowed the idea of the different parts which go to constitute his wheel, and for the first time brought them together into one whole, and that whole is materially different from any whole that existed before,

then he is the original and first inventor, and is entitled to a patent therefor."

In *Brown* v. *Whittemore*, 5 Fish. 524, decided by Justice Clifford and Judge Lowell, the Court says: (p. 526.)

"That it made a new and useful combination, we have no doubt; because, though a competent mechanic would easily adopt a treadle to a hay-rake, yet the idea of the combination was of itself a meritorious invention and a new one."

In *Adams* v. *Joliet Mf'g. Co.*, 12 *O. G.*, 93, the improvement covered by the patent was accomplished by simply reversing the direction in which the feed regulators revolved in the hopper of a corn-sheller. The patent was sustained. Opinion by Judge Blodgett.

In *Bray* v. *Hartshorn*, 1 *Cliff.*, 538, it is held that the application to a machine of an element in itself old, by by which the machine is enabled to secure a beneficial result not before obtained by the same instrumentality in that machine, is patentable invention. The claim there sustained by Justice Clifford was as follows:

"Providing the tubular or hollow curtain-roller, with a long spiral spring within it, when said spring is used for the purpose, not merely of drawing up the curtain by its recoil, as that is not new, but of balancing it in any position in which it may be placed, substantially as described."

The Court distinguishes between the application of an old machine to a new use, and the adaptation of an old machine to a new method of working by the introduction of an element, old in itself but new in the organization, of which it is thus made a part.

In *Miller & Peters Mf'g Co.* v. *Dubrul* 5 *Cen. L. J.* 467, the patent sustained, by Justice Swayne, was for a flange on the base of the cup of a cigar mould, when the cups were made separate, similar flanges having been used, and shown in a prior patent where the cups were made in sections of several each. In his opinion Justice Swayne says:

"Now if this was so worthless or wanting in originality, so immaterial as it is claimed, why should they not let it alone? The conclusion I have reached, in sustaining

the patent, only requires that this should be done. It does not interfere with the use of any of these inventions, which really seem to be better than his, and all of which antedate his. His invention, such as it is, worth much or little, belongs to him, and under the patent he is entitled to the exclusive manufacture of it."

See also *Livingston* v. *Jones*, 1 *Fish*, 521. (526.) *Cook* v. *Ernest*, 5 *Fish*, 396. *Waterbury Brass Co.* v. *Miller*, 9. *Blatch.* 77.

The present case calls for no such nice distinctions as those upon which most of the cases cited were determined. The patentee was not merely the first to make the combination of mechanism claimed, he was the first to introduce his improvement by any mechanism. It is not pretended that, prior to his invention, any mechanical means was ever contrived for adjusting to its several positions an extension shelf for an oven, or indeed an extension shelf for any other purpose.

That this automatic action is a decided improvement, and adds a really valuable feature to the stove is beyond dispute. If a thousand persons in succession were to choose between a stove having this improvement and one in all other respects the same but without it, not one would select the stove without it.

The fact that manufacturers with every motive for adding this feature have never done so until this patent made its appearance, and then eagerly appropriate it, is in itself exceedingly convincing evidence that it involved invention.

The defendants have not only imitated the patentee in making an automatic extension shelf, they have copied the identical means of doing this shown in the patent.

They have done this in the market where complainant's invention had acquired a patronage, for the purpose of appropriating to themselves this patronage.

They could not obtain this patronage by making and selling any of the devices, relied upon by them as anticipations, however skillfully such devices might be finished.

This patronage, due as it is to a beneficial function of

the stove with which it was for the first time endowed by the patentee's invention, belongs, for a definite period of time, to complainant. If it has no value it costs them nothing to dispense with it. If its value and the mode of obtaining it were apparent without invention, they should have given the public the benefit of it before the date of complainant's patent. If they have hitherto withheld from the public an obvious improvement, it is no hardship that it should be withheld from them. It is in the interest of the arts that the person who first confers the advantage of any improvement upon the public should be rewarded for a time by the exclusive patronage due to that improvement. The rule, often reiterated by the Courts, that all doubts as to the novelty and patentability of an invention should be solved in favor of the patentee, is a just and beneficial one. *See Waterbury Brass Co.* v. *Miller*, 9 *Bl.*, 77; *McMillin* v. *Barclay*, 5 *F.* 189; *Birdsell* v. *McDonald*, 6 *O. G.*, 682.

Respectfully submitted,

ROB'T H. PARKINSON,

For Appellant.

JAN 13 1882
JAMES H. McKENNEY, Clerk

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OCTOBER TERM, 1881.

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IN EQUITY.

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STATEMENT OF CASE.

This is an appeal from the Circuit Court of the United States for the Eastern District of Missouri. The suit is for infringement of letters patent No. 180,001, for improvement in cooking-stoves, granted Esek Bussey, as inventor, and Charles A. McLeod, as assignee of one-half interest, July 18, 1876. Complainant is grantee of the entire interest in St. Louis and all other territory between the Mississippi River and the Rocky Mountains. Its title is admitted by defendants. (See Record, p. 16.)

The case was heard below on bill, answer, replication, and proofs, and a decree entered, finding that there was no infringement, and dismissing the bill.

From this decree the complainant appealed.

The validity of the patent and infringement are in issue.

ASSIGNMENT OF ERROR.

The Court erred—

First. In finding that defendants had not infringed upon the rights of complainants under their letters patent.

Second. In dismissing the bill.

Third. In that it did not find the patent sued upon in all respects good and valid, that complainants were duly vested with title thereunder for the territory set forth, and that the defendants had infringed the same within said territory; and grant the injunction, account, and other relief prayed for in the bill.

THE INVENTION.

The invention consists in combining with the oven of a cooking-stove an automatically adjustable extension shelf, in such a manner that it will, by the act of opening the oven, be adjusted to the same plane as the bottom of the oven and afford an external support, upon which the vessels in which food is being baked can be readily drawn without lifting them, and will, by the act of closing the oven, be restored to a perpendicular position, where it may remain without encroaching upon the space available for cooking purposes.

The shelf is provided with hinges so constructed as to admit of its falling outside the oven in a plane with its bottom surface, to support it with its load when in such position, and to allow it to rise to a perpendicular position when the oven is closed.

The oven door is provided at its rear edge, near the bottom, with a cam, which slides under the end of the shelf as the door begins to close, and lifts it out of the way before the door comes directly in contact with it, the edge of the shelf being rounded off so as to leave the front of the door a sufficient arc in which to swing while the cam is lifting the shelf out of the way. The same cam controls the downward movement of the shelf when the door opens and prevents its falling abruptly.

This automatic adjustment of the shelf to its several

positions is rendered especially important by the fact that the shelf, if kept within the stove, is usually too much heated to be adjusted by hand, without serious inconvenience, as well as loss of time.

The claim is as follows:

"In combination with a stove oven, a hinged shelf fitted to fall outward and downward automatically when the oven door is opened, and to be raised up by closing the oven door adapted to operate upon it for that purpose, substantially in the manner and for the purposes herein set forth."

INFRINGEMENT.

Defendants' stove is in evidence as "Complainant's Exhibit Defendants' Stove." The manufacture and sale of this stove by defendants, in St. Louis, Mo., subsequent to the assignment of that territory under the patent here in suit to complainants, and prior to the commencement of this suit, is admitted. (See Record, p. 13.)

This stove has an oven door provided with a cam or projection, and a hinged extension shelf which, when the oven door is opened, adjusts itself to the plane of the oven bottom, and which, upon closing the oven door, adjusts itself by automatic action to a position perpendicular to the plane of the oven bottom, the whole constructed, arranged, and operated in the same way as is shown in complainants' patent.

Every element of the patented combination is found in defendants' stove in the same relative position and serving the same purpose. The only difference, even formal, is that the cam projection from the rear edge of the door, which operates to raise the shelf, is placed slightly higher than that of the patent, and the edge of the shelf extended upward in a kind of lip to meet it. In each case the cam operates upon the under side of the shelf in the same way and for the same purpose. The only testimony upon this question is that of complainant's expert, no counter-evidence being offered. He says: "The only difference which I find between the two is, that in the patent the projection on the door for raising the shelf operates on the edge and

bottom of the shelf, while in defendants' stove the projection on the door operates on the edge and bottom of a raised portion of the shelf, and I am of the opinion that this difference is an immaterial one, and does not affect the operation of the device; its only effect being to slightly decrease the area of the shelf."

The patentee is entitled to protection:

First. Against the use of the same combination in the same form.

Second. Against the use of a combination constructed, arranged, and operated in substantially the same manner, but in which mechanical equivalents are substituted for one or more elements of the patented combination.

Third. Against the use of a combination arranged and operated in substantially the same manner and consisting of the same elements, though differing in form and adjustment.

Fourth. Against the use of his invention as part of another combination, even though such combination be an improvement upon his invention and patented as such.

Ames v. *Howard*, 1 Sum. 482.
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There is no extension shelf or supporting surface of any kind, and nothing that performs, or is capable of performing, any kindred function, The weather strip does not act as a shelf or support for any thing whatever, but, on the contrary, is itself supported by the threshold upon which it lies. If applied to an oven, it would not extend beyond the surface of the oven, but rest upon it. It would not be flush with that surface—an important feature in the extension shelf of a oven—but would remain above it. The weather strip performs its functions only

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PARIS PATENT.

Paris describes a roasting rack, which may be used as an oven shelf, and which is so made "that, when turned up, the oven door may shut over it." It is not lowered by opening, or raised by closing, the oven door. The door has no cam or projection, and there is no automatic action

whatever. The Paris invention is precisely what is disclaimed in complainant's patent, and has just the disadvantages which complainant's invention is designed to overcome, viz., the necessity of raising and lowering a heated shelf by hand.

BURKE'S DAMPER.

This exhibit shows neither complainant's combination nor any combination that could be substituted for it. It is simply a damper for regulating draft. It performs no office even remotely analogous to that of complainant's extension shelf, and is neither so supported nor in such relation to other parts as to be capable of such an office. It has, as its different purpose and different association require, an essentially different mode of operation. (See dep. *Bates*, p. 15; ans. 5.)

It is ~~totally~~ fatally deficient on another ground. It does not antedate complainant's invention.

There is no evidence tending to show any sale or use of Burke's damper prior to April 15, 1876, about a month before the application for complainant's patent was filed, and about five months after complainant's invention is shown to have been complete.

The patentee testifies to having given directions to his pattern maker about making the wooden pattern for his invention in November, 1875; that these wooden patterns were completed before Christmas, and "were identical with that shown and described in the patent." (See dep. *Bussey*, p. 11; ans. 4.)

He is corroborated in this by his pattern maker. (See *admission*, p. 12.) No effort is made to dispute these dates.

A patentee who has used reasonable diligence in applying for a patent, is entitled to carry back his invention to the time when he first gave it definite expression.

See *Reed* v. *Cutter*, 1 St. 590.

Reeves v. *Keystone Bridge Co.*, 6 Fish. 456.

"The evidence must establish clearly the priority of a completed and useful machine over the complainant's, or it

is unavailing—to doubt upon this point is to resolve it in the negative."

Parham v. *American Buttonhole, Overseaming and Sewing Machine Co.*, 4 Fish. 468, 482.

"The invention or discovery relied upon as a defense, must have been complete and capable of producing the result sought to be accomplished: and this must be shown by the defendant. The burden of proof rests upon him, and every reasonable doubt should be resolved against him."

Coffin v. *Ogden*, 18 Wall. 120.

Washburn & Moore Mfg. Co. v. *Haish*, 19 O. G. 173.

PATENTABILITY OVER PRIOR DEVICES.

It is sufficient that none of the alleged anticipations can be substituted for complainant's invention, and do its work. That which can not be substituted, without material modification, for a patented device, and do the same work, can not affect the validity of the patent. None of the alleged anticipations produce the same or analagous results.

"Particular changes may be made in the construction and operation of an old machine so as to adapt it to a new and valuable use not known before, and to which the old machine had not been, and could not be applied without those changes, and, under those circumstances, if the machine, as changed and modified, produces a new and useful result, it may be patented, and the patent will be upheld under existing laws.

Such a change in an old machine may consist merely in a new and useful combination of the several parts of which the old machine is composed, or it may consist of a material alteration or modification of one or more of the several devices which entered into its construction; and, whether it be the one or the other, if the change of construction and operation actually adapts the machine to a new and valuable use not known before, and it actually produces a new and useful result, then a patent may be granted for the same, and it will be upheld as a patentable improvement."

Seymour v. *Osborne*, 11 Wall. 516, 548.

In the *Cawood cases*, 4 *Otto* 695, the alleged anticipations were all machines designed for analagous work, and in structure very closely resembled the patented device. The Supreme Court in holding them insufficient to invalidate it laid great stress upon the fact that none of them would without modification do its work.

In *Barnes* v. *Straus*, 5 *Fish* 531, the patent was for a corset-spring, consisting of two or more metallic plates placed one upon another and fastened together at their center, so connected that they could move upon each other in the direction of their length. In sustaining the patent and distinguishing the device from carriage springs composed of plates similarly connected, the Court per Judge Blatchford says:

"The carriage spring differed from the corset spring in not having that flexibility at the center of its length which the corset spring has and must have, and in not curving in one direction at one end and in the other direction at the other end, as the corset spring is shown in the drawing of this patent to do. In other words the carriage spring was not a corset spring, and could not be used as such without such a change as involved invention."

In *Parker* v. *Styles*, 5 *McL.* 44, Justice McLean says: (p. ~~68~~ 62.)

"Proof of the previous use of a structure bearing some resemblance in some respects to the improvement of the plaintiff, and which might have been suggestive of ideas, or have led to experiments resulting in the discovery and and completion of his improvement, will not invalidate his claim under his patent. ~~[See p. 62.]~~

This Court has repeatedly held that a patent for a single device, or for a combination of old elements, cannot be invalidated for want of novelty, except by showing the entire invention in some single prior device, capable of answering every purpose of the patented device without change. See *Bates* v. *Coe*, 8 *Otto*, 31; *Imhaeuser* v. *Buerk*, 11 *Otto* 647; *Parks* v. *Booth*, 12 *Otto* 96.

The question of novelty and patentability is not dependent upon the introduction of new mechanical principles.

The most meritorious inventions of the age, almost without exception, consist in the combination or modification of well known mechanical agencies by which the organization into which they are introduced, is endowed with some new property or advantage.

The novelty of the improvement is determined with reference to the organization as a whole, not with reference to any or all of its elementary parts separately considered.

If the organization as a whole is new and operative for some useful purpose, it is immaterial how simple the instrumentalities may be, or how slight the modification to adapt them to their new relations. See *Seymour* v. *Osborne*, 11 *Wal.* 516, 548.

Inventions which work important revolutions in the art to which they relate, and remedy long standing and serious difficulties, have often been effected by such slight mechanical changes that a child could make them when once suggested.

In *Ryan* v. *Goodwin*, 3 *Sum.* 514, Justice Story says in speaking of patent for improvement in matches—says: "The combination is apparently very simple, but the simplicity of an invention so far from being an objection to it, may constitute its great excellence and value."

In *Pitts* v. *Whitman*, 2 St. 609, Justice Story says: (p. 619.)

"If the combination was new, it is a patentable matter, although a part of the apparatus might have been applied to similar purposes in other and different machines. Under such circumstances it would not be a mere application of an old apparatus to a new purpose, but a new combination of machinery, incorporating, in part, an old apparatus for a new purpose."

In *Many* v. *Sizer*, 1 *Fish.* 17, the court per Sprague, J., says:

"But if the patentee borrowed the idea of the different parts which go to constitute his wheel, and for the first time brought them together into one whole, and that whole is materially different from any whole that existed before,

then he is the original and first inventor, and is entitled to a patent therefor."

In *Brown* v. *Whittemore*, 5 Fish. 524, decided by Justice Clifford and Judge Lowell, the Court says: (p. 526.)

"That it made a new and useful combination, we have no doubt; because, though a competent mechanic would easily adopt a treadle to a hay-rake, yet the idea of the combination was of itself a meritorious invention and a new one."

In *Adams* v. *Joliet Mf'g. Co.*, 12 *O. G.*, 93, the improvement covered by the patent was accomplished by simply reversing the direction in which the feed regulators revolved in the hopper of a corn-sheller. The patent was sustained. Opinion by Judge Blodgett.

In *Bray* v. *Hartshorn*, 1 *Cliff.*, 538, it is held that the application to a machine of an element in itself old, by by which the machine is enabled to secure a beneficial result not before obtained by the same instrumentality in that machine, is patentable invention. The claim there sustained by Justice Clifford was as follows:

"Providing the tubular or hollow curtain-roller, with a long spiral spring within it, when said spring is used for the purpose, not merely of drawing up the curtain by its recoil, as that is not new, but of balancing it in any position in which it may be placed, substantially as described."

The Court distinguishes between the application of an old machine to a new use, and the adaptation of an old machine to a new method of working by the introduction of an element, old in itself but new in the organization, of which it is thus made a part.

In *Miller & Peters Mf'g Co.* v. *Dubrul* 5 *Cen. L. J.* 467, the patent sustained, by Justice Swayne, was for a flange on the base of the cup of a cigar mould, when the cups were made separate, similar flanges having been used, and shown in a prior patent where the cups were made in sections of several each. In his opinion Justice Swayne says:

"Now if this was so worthless or wanting in originality, so immaterial as it is claimed, why should they not let it alone? The conclusion I have reached, in sustaining

the patent, only requires that this should be done. It does not interfere with the use of any of these inventions, which really seem to be better than his, and all of which antedate his. His invention, such as it is, worth much or little, belongs to him, and under the patent he is entitled to the exclusive manufacture of it."

See also *Livingston* v. *Jones*, 1 *Fish*, 521. (526.) *Cook* v. *Ernest*, 5 *Fish*, 396. *Waterbury Brass Co.* v. *Miller*, 9. *Blatch.* 77.

The present case calls for no such nice distinctions as those upon which most of the cases cited were determined. The patentee was not merely the first to make the combination of mechanism claimed, he was the first to introduce his improvement by any mechanism. It is not pretended that, prior to his invention, any mechanical means was ever contrived for adjusting to its several positions an extension shelf for an oven, or indeed an extension shelf for any other purpose.

That this automatic action is a decided improvement, and adds a really valuable feature to the stove is beyond dispute. If a thousand persons in succession were to choose between a stove having this improvement and one in all other respects the same but without it, not one would select the stove without it.

The fact that manufacturers with every motive for adding this feature have never done so until this patent made its appearance, and then eagerly appropriate it, is in itself exceedingly convincing evidence that it involved invention.

The defendants have not only imitated the patentee in making an automatic extension shelf, they have copied the identical means of doing this shown in the patent.

They have done this in the market where complainant's invention had acquired a patronage, for the purpose of appropriating to themselves this patronage.

They could not obtain this patronage by making and selling any of the devices, relied upon by them as anticipations, however skillfully such devices might be finished.

This patronage, due as it is to a beneficial function of

the stove with which it was for the first time endowed by the patentee's invention, belongs, for a definite period of time, to complainant. If it has no value it costs them nothing to dispense with it. If its value and the mode of obtaining it were apparent without invention, they should have given the public the benefit of it before the date of complainant's patent. If they have hitherto withheld from the public an obvious improvement, it is no hardship that it should be withheld from them. It is in the interest of the arts that the person who first confers the advantage of any improvement upon the public should be rewarded for a time by the exclusive patronage due to that improvement. The rule, often reiterated by the Courts, that all doubts as to the novelty and patentability of an invention should be solved in favor of the patentee, is a just and beneficial one. *See Waterbury Brass Co.* v. *Miller*, 9 *Bl.*, 77; *McMillin* v. *Barclay*, 5 *F.* 189; *Birdsell* v. *McDonald*, 6 *O. G.*, 682.

Respectfully submitted,

ROB'T H. PARKINSON,

For Appellant.

SUPREME COURT U
FILED
DEC 22 1881

THOS. S. BOWMAN, Printer, 214 and 216 Pine Street, St. Louis.

United States Supreme Court.

OCTOBER TERM, 1881.

BRIDGE, BEACH & CO.
Appellants,
vs.
THE EXCELSIOR MFG. CO., *et. al.*
Appellees.
No. 224.

BRIEF OF S. S. BOYD FOR APPELLEES.

United States Supreme Court.

OCTOBER TERM, 1881.

BRIDGE, BEACH & CO. *Appellants,*
vs.
THE EXCELSIOR MFG. CO., *et. al.* *Appellees.*
No. 224.

BRIEF OF S. S. BOYD FOR APPELLEES.

STATEMENT OF THE CASE.

This is an appeal from a decree of the Circuit Court of the United States for the Eastern District of Missouri, dismissing a bill filed by complainant, the appellant, for infringement of Letters Patent No. 180,001, granted Esek Bussey and C. A. McLeod, on the 18th day of July, 1876, for "Improvement in Cooking Stoves," the right to which, for certain specified territory, was vested in the complainants. The answer of the defendants, appellees, denied infringement, and alleged invalidity of the patent by reason of certain

prior patents and public uses anterior to the date of the alleged invention of Bussey. The Court below, Dillon and Treat, J. J., held that there was no infringement, and dismissed the bill, as appears from the opinion of Judge Dillon, 17 O. G. 259, a copy of which is annexed to this brief.

POINTS.

Although the answer puts in issue the validity of this patent, yet we do not now desire to press this question, except parenthetically, since, if we are correct in the view we take of the proper construction of the claim—which view is confirmed by the opinion of his Honor, Judge Dillon—that it is limited to the precise elements set forth and shown, it is of no moment to us whether the patent be valid or invalid.

Appellees do not Infringe.

In order to decide this question, of course the first thing necessary is to determine what construction must be put on the claim—what, in other words, does the patent cover. This must be ascertained by examining into the state of the art at the date of the alleged invention. The claim is as follows:

"In combination with a stove oven, a hinged shelf, "fitted to fall outward and down automatically when

"the oven door is opened, and to be raised up by clos-
"ing the oven door, adapted to operate upon it for that
"purpose, substantially in the manner and for the pur-
"poses herein set forth." The specification says: "I
"do not claim broadly, the oven shelf, but *merely* the
"means shown of operating said oven shelf automati-
"cally, by opening the oven door to lower the shelf to
"the plane of the bottom of the oven, and closing the
"oven door to raise the oven shelf at a right angle
"with the bottom of the oven." Nothing is *said* as to what shall cause the shelf to fall down, the inference being, I assume, that it will fall of its own gravity as soon as the door is opened, and to this end it must not be allowed to pass beyond a perpendicular to the plane of the oven bottom; the only direction given, however, being that "the oven shelf is raised to a right angle "with the bottom of the oven." The only active elements in the combination, then, are the door and the cam E. How much of this combination was new? We find, on the 11th of April, 1871, a patent was granted Paris for a "Cooking Stove" having a rack thus described, (Record, p. 35):

The roasting-rack S, Fig. 2, is made so that it will let down horizontally or turn up perpendicularly, and so that when turned up the oven door may shut over it, and when let down horizontally pans containing articles baking or roasting, especially the dripping pan, may be drawn out onto it, so that the intense heat of the oven may be avoided, and so that such work as basting meat, for instance, may be done outside of the oven.

The rack is supported by the combination of the side or jamb of the stove with the oven bottom, which unite at their point of contact to

form sockets or slots for one, two or more projecting arms of said rack. This rack is movable, so that when not in use in can be laid away; and the oven door may be made to shut over the open sockets or slots formed for its reception. This rack may be attached simply to the sides of the stove or oven-bottom, if desired.

Plaintiff's rack or shelf is "raised at *right angles* to "the oven bottom." Paris' is "turned up *perpendicularly*," each, of course, then falling by its own gravity when the oven door is opened. When Paris' "is let "down horizontally, pans containing articles baking "or roasting may be drawn out onto it." "By the use "of plaintiff's improvement an extension is made to the "bottom when the oven door is open, so that pans or "other vessels used in the oven can be drawn outside "the oven.

The shelves, or racks, are then alike in their property of not being able to maintain their perpendicular when the oven door is open, and identical in their purposes and uses. The only remaining comparison is as to how they are raised. Plaintiff says the "shelf is so ar-"ranged that by the closing of the door to the oven it "is *automatically* raised up." To accomplish this, he says: "Near the bottom of the oven door, I place a "cam or projection E, as shown in Fig. 1, which, as the "oven door is closed, presses the under side of the "oven shelf and raises it." Exactly how this operates, is best seen by looking at the certified duplicate of Bussey's model, filed with his application, which we produce, from which it will, I think, be found that his was a very crude device, rendering it necessary, in

order that there should be no binding of the edge of the shelf against the door, to have something on the under side of the shelf for the cam E to engage with or to have the corner of the shelf cut entirely off. Paris does not *describe* any way of raising his rack, but merely says "the rack is made so that it will turn up perpendicularly," but if we look at the drawings of the patent, particularly at Fig. 2 (Record, p. 36), I think it will be seen that when his oven door is closed, the flange or molding on the bottom of the door will inevitably raise his rack quite as well and to the same extent as does the cam E of plaintiff, and it may very well be that Paris intended to rely on this to raise his rack. At all events, we submit that in view of this patent, plaintiff's patent must be strictly limited to the *identical* construction shown and described.

Judge Dillon says: "The Paris patent is older than "the Bussey patent, and had everything, except, as I "have stated, the device provided by the Bussey patent "for raising the shelf. Now what did Bussey do? He "applied the cam on the door, using the door as a "lever to raise it. That is what he did."

Looking at the patent of Vrooman (Record, p. 38), we find that it was nothing new to have in stoves a construction such that the movement of a swinging part should serve to raise and lower another part automatically, from a horizontal to a vertical position. Looking at the patent of Carew (Record, p. 32), we find a swinging door *a* with an inclined arm *d* which passes beneath a horizontal plate *c* and raises it, and

when the door is opened the plate falls automatically back to its former horizontal position. The model presented by us clearly explains this position. The only difference between this and plaintiff's device, is that one is used with a *stove* door, and the other with a *house* door, and the purpose of the two plates are different. It is not the use of identically the same construction on a stove door, but a double use of the devices, and one which, under well settled rules, will not support a patent? The decisions on this point we will cite further on. Looking still further, at the Thomasson patents (pp. 28 and 30), we find two modes of automatically raising and lowering carriage steps by means of the opening and closing of the door of the carriage—the steps being raised to a perpendicular position inside of the carriage door when it is closed, and thrown into a horizontal position by the opening of the carriage door. These two we do not of course claim show the identical device of plaintiff, but show one much more satisfactory and effective, and which exhibits a much higher order of invention. They do, however, clearly show that plaintiff's claim can not have any broad construction. About the date of these references nothing of course can be said, as they confessedly all anticipate Bussey's invention.

In regard to these two patents, Judge Dillon says:

Here is an English patent (Thomasson No. 2282, Dec. 22, 1798), very much older than the complainant's patent, for raising the steps of a carriage, which is done precisely in the same way. There is the cam on the door which operates on a projection of the

steps and raises and lets it down as the door shuts and opens. And the proof shows that in regard to weather strips on doors, precisely the same device has been used. (Carew patent, No. 94,472, Sept. 7th, 1869). The cam being old, the use of a swinging door as a lever being old and the shelf being old, it might be a question whether there was a sufficient degree of invention in bringing these old elements to bear on the hinged shelf to make it patentable. But we decide the case on the ground that, if the patent can be sustained at all, it can be sustained only as a patent for a device, and only covers the particular device which the complainant described in his patent.

Let us now look at the Burke range, of which a drawing is found at page 40 of the record, and a model is presented which correctly represents it.

Peter N. Burke, after identifying the model as a faithful copy of "automatic damper" used in his range, says: "The idea of an automatic damper presented itself to my mind at the completion of my first range, made at Boston *in 1874*, its mechanical application took place in the month of *November, 1875*, and was embodied in my patterns before the *8th of January, 1876*." (Record, p. 18, ans. 4). He further says (ans. 5 *et seq.*) that this mechanism was first actually introduced into his range between the middle of *January, 1876, and February, 1876*, and that a range was, according to his books, sold on *April 15, 1876*, to one Darlington. He says the wooden patterns for this attachment were made by Wm. Burrows, and produces the bills for the work, five in number—the first bearing date December 3, 1875, and the last January 8th, 1876. He says that the first application of the dam-

per was made by his pattern filers, Shields & Sickles, who left his employ, the one on March 3, 1876, and the other on March 11, 1876 (p. 19 ans. 16, *et seq.*, p. 24, ans. 12, *et seq.*), That since their first adoption the devices have been used continuously in his ranges, and sent all over the country (ans. 21 and 22.) Wm. Burrows (p. 21, ans. 7), identifies the several bills for the alteration in the Burke range. He further says (p. 22 × ans. 3), that he remembers distinctly about this matter, for the reason it was the first work he ever did for Burke. John Burrows (p. 16, ans. 8 *et seq.*), says he did the actual work on the patterns under direction of his brother William, between the months of November, 1875, and February, 1876. He says also that he made the Burke model we introduce. McCord, porter for Burke, says (p. 22, ans. 1 *et seq.*), he put the first automatic damper in a range for Burke, assisted by Sickles & Shields, and that the range sold Darlington had the damper in, as he put it in himself—but this was not the first range which had it.

E. F. Myers, bookkeeper for Burke says (p. 24, ans. 7), he shipped Darlington's range April 15, 1876, and that it had the automatic damper. He further says that one of these automatic dampers was put in a range before Sickles & Shields left, and that Sickles left March 3d and Shields March 11th, 1876 (ans 15). From this it is clear that Burke conceived of this invention in 1874, gave directions for its embodiment in patterns in November, 1875, had the patterns com-

pleted as early as, if not earlier than January 8th, 1876, the date when all the patterns were furnished, had the automatic damper in a range before March 3d, 1876—probably in January or February—and sold a range with this attachment April 15th, 1876. We submit that this device is a complete anticipation of plaintiff's shelf, provided it was earlier in time. Let us see what showing plaintiffs make on that point. Bussey, the alleged inventor says (p. 11, ans. 4):

I conceived the invention in October 1875; we soon after this commenced applying it to a cooking range. We completed the wood patterns of the alteration, which included the application of the oven shelf, before Christmas of that same year. I cannot tell whether I took off the wood patterns before Christmas or not. To the best of my recollection, I took off the iron patterns *about* the 1st of February 1875. I gave directions to John Hampden, our pattern maker, *about* some time in November, 1875, to make the wood patterns suitable for application to the range. I fix October as the date of conception from the fact that I was in Chicago the *latter* part of September, remained there *two weeks*, and *after* I returned I conceived of the invention. As to giving directions to the pattern maker, I *judge* that it was in November for the reason that we were about eight or ten weeks in making the alteration in the range, and when I got to this part I gave the directions to the pattern maker. I connot fix the date any more definitely than this. That we completed the patterns before Christmas is a matter of recollection. We completed the patterns ready for the sand early in the spring of 1876, and from this I am certain that the wood patterns were completed before Christmas. We shut down at or before Christmas, and did not commence work again until the first week in February.

To save time, the following stipulation was made:

It is admitted that John Hempden will testify that he was the pattern maker for Bussey & McLeod, in the fall of 1875, that he

made the wood patterns concerning which Mr. Bussey has testified, and that according to his recollection, the said patterns were completed before Christmas, 1875: that he has no memorandum from which he testifies, but relies wholly upon his memory.

This is *all* the evidence as to Bussey's invention. Admitting it to be true to its fullest extent, and we have a conception by Bussey not earlier than *some time* in October, 1875—direction given to pattern maker *some time* in November—wood pattern completed *before* December 25, 1875, and iron patterns, from which stoves *could* be cast finished early in the spring of 1876—but *not a particle of evidence* as to *when* a stove was actually made embodying the device, or indeed that one was *ever* made. And we think a glance at the model from the Patent Office will be sufficient to convince that that identical construction never was used, for the reason already referred to, that to make it operative, there must be something on the under side of the shelf for the cam to engage with. Our answer puts directly in issue the fact as to whether this device was ever used; we alleging that it "never was put to "any practical use by the complainant, or his assign-"ors, or any one else." (Record, p. 6). Burke fixes his conception in October, 1874, directions given to pattern maker in November, 1875, patterns actually made before January 8th, 1876, device put on a range before March, 1876, and range sold April 15th, 1876—all of Burke's dates, saving his conception, being fixed from written memoranda, and substantiated by the testimony of three or four witnesses, who likewise

speak from memoranda, either made by themselves, or concerning the correctness of which they are personally cognizant. We submit that this makes out a complete anticipation of Bussey's invention. But granting that all of these anticipating devices do not render this patent utterly void, must it not be most strictly construed in order to save it? So construed, do we infringe? What we use is shown in the Letters Patent granted us on the 9th of July, 1878, as assignee of Little & Nation, and found at p. 39 of the record, and shown more clearly in the model we present. We submit that this construction does not infringe upon the plaintiff's patent, unless he can cover broadly *any and all ways* of raising an oven shelf by means of the closing of the door.

As stated by Judge Dillon;

The Defendant's device is not the same, but an improvement on that used by Bussey, and does not infringe it. We hold, also, that the Bussey patent does not cover all methods of raising the shelf by means of closing the oven door, but only the particular method described, which, in our opinion, is not infringed by the method practiced by the defendant.

We have said above that the Bussey patent showed but a double use of the Thomasson Carriage Step and the Carew Weather Strip. The law on this point is very simple and well settled.

In order to escape the objection of a double use it is necessary that the new occasion or purpose to which the use of a known thing is applied should not be merely analogous to the former occasion or purposes to which the same thing has been applied. When the

principle is well known, or the application consists in the use of a known thing to produce a particular effect, the question will arise whether the effect is in itself entirely new, or whether the occasion only upon which the particular effect is produced is new. If the occasion only is new then the use to which the thing is applied is simply analogoes to what had been done before.

Curtis on Patents, Sec. 35, 56.

This statement is fully sustained by the decision of the Supreme Court in *Brown vs. Piper*, 91 U. S. 41, and also by the following cases:

Ames vs. Howard, 1 Sumner, 487.
Howe vs. Abbott, 2 Story, 194.
Bean vs. Smallwood, id. 411.
Winans vs. B. &. P. R. R., id. 412.
Hotchkiss vs. Greenwood, 11 How. 248.

We, therefore, submit that the opinion pronounced below was correct, and that we either do not infringe, or this patent is void for want of novelty and patentability.

SAM'L S. BOYD,
Counsel for Appellees.

DECISION OF THE U. S. COURT.

U. S. Circuit Court—Eastern District of Missouri.

Bridge, Beach & Co. *versus* The Excelsior Manufacturing Company.

Decided March Term, 1879.

1. The patent to Esek Bussey and C. A. McLeod, No. 180,001, July 18, 1876, for "improvement in cooking stoves," construed in the light of the art, if sustainable at all, does not cover all methods of raising the shelf by means of closing the oven-door, but only the particular method (means) described.
2. The case being old, the use of a swinging door as a lever being old, and the shelf being old, it might be a question whether there was a sufficient degree of invention in bringing these old elements to bear on the hinged sheif to make it patentable.

Mr. R. H. Parkinson for complainants.

Mr. S. S. Boyd for respondents.

Dillon, *J:*

This is a bill in equity by the complainants, Bridge, Beach & Co., against The Excelsior Manufacturing Company, for an infringement of Letters Patent No. 180,001, granted to Esek Bussey and C. A. McLeod, on the 18th day of July, 1875, for an "improvement in cooking stoves." Complainants have been duly invested by Bussey, the patentee, with the interest of the patentee in the territory embraced in this district. The answer of the defendant denies the infringement charged upon it, and alleges the invalidity of the patent (the Bussey patent) by reason of certain prior patents and public use of the said invention prior to the invention of Bussey.

The claim in the complainants' patent is in these words:

In combination with a stove oven, a hinged shelf fitted to fall outward and down automatically when the oven door is opened, and to be raised up by closing the oven-door, adapted to operate upon it for that purpose, substantially in the manner and for the purposes herein set forth.

I shall dispose of this matter very briefly. The patent relates to this hanging shelf (llustrating with Bussey's tin model), which can be easily removed, and for a device, as we construe it, which enables it to be raised up by reason of a cam attached to the door operating as a swinging lever, applied underneath the hinged shelf, which raises it in that way—that is, by closing the oven-door; and, as it does not pass the centre of gaavity, it will fall down of its own weight when the door is opened. So it is said in the patent to "work automatically." The device of the defendant is shown in this model, (iron model, Letters Patent No. 205,754, July 9, 1878.) Both have the same hinged shelf to which the patent relates, but instead of operating below, as in the other patent, it operates in this manner from above, and is in all respects a superior device, as is very evident on an inspection of it.

Now the question in relation to the validity of the Bussey patent might be somewhat doubtful, if it was necessary, in the view the court takes of the matter, to decide it. The state of the art at the time the Bussey patent was granted, so far as relates to stove-ovens, without going into the state of the art in analogous devices, was this: Prior to this time a Mr. Paris had procured a patent (No. 113,556, April 11, 1871) for a hinged shelf, in combination with a stove-oven precisely like the one here in question, removable at pleasure and capable of being inserted at pleasure, the only difference being, so far as this patent is concerned and the uses to which it is to be applied are concerned, that he did not provide any device for raising it up or letting it down by means of the opening and closing of the door. It was to be raised by the hand, if at all, so far as we can see from the patent. The Paris patent is older than the Bussey patent, and had everything, except, as I have stated, the device provided by the Bussey patent for raising the shelf. Now, what did Bussey do? He applied the cam on

the door, using the door as a lever to raise it (illustrating) in that way. That is what he did. Now, the shelf was not new (the shelf, as an extension of the oven-plate, is a convenience, however,) the stove was not new, and the cam was not new. But Bussey seems to have been the first one to apply that method of raising and using the hinged shelf in combination with a stove-oven.

It is claimed that that patent is not valid because precisely the same principle had been used in analogous arts and industries—as, for example, a very common one. Here is an English patent, (Thomason, No. 2,282, December 22, 1798,) very much older than the complainant's patent, for raising the step of a carriage, which is done in precisely the same way. (Illustrating with model of carriage-step.) There is the cam on the door which operates on a projection of the step and raises and lets it down as the door shuts and opens. And the proof shows that, in regard to weather-strips on doors, precisely the same device has been used. (Carew patent, No. 94,472, September 7, 1869.)

The cam being old, the using of a swinging door as a lever being old, and the shelf being old, it might be a question whether there was a sufficient degree of invention in bringing these old elements to bear on the hinged shelf to make it patentable.

But we decide the case on the ground that, if the patent can be sustained at all, it can be sustained only as a patent for a device, and only covers the particular device which the complainant described in his patent, in this language:

> In combination with a stove-oven, a hinged shelf [he does not claim the shelf alone] fitted to fall outward and down automatically when the oven-door is opened, and to be raised up by closing the oven-door, adapted to operate upon it for that purpose, substantially in the manner and for the purpose herein set forth.

The manner is by applying the cam underneath the shelf. It does not pass the centre of gravity, but rests on the edge of the plate of the stove, and will therefore fall down of itself.

Now this device is essentially an improvement on the one in the Bussey patent. It is raised from above and not from below; and

(illustrating) by means of a very peculiar hinge here the shelf is incapable of passing a given point, where it will fall down of itself as the door is opened.

Without passing on the validity of the Bussey patent, we hoid that the defendant's device is not the same, but an improvement on that used by Bussey, and does not infringe it. We hold, also, that the Bussey patent does not cover all methods of raising the shelf by means of closing the oven-door, but only the particular method described, which, in our opinion, is not infringed by the method practiced by the defendant.

Bill dismissed with costs.